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THE ORATIONS

OF

DEMOSTHENES

AGAINST

TIMOCRATES, ARISTOGITON, APHOBUS,
ONETOR, ZENOTHEMIS, APATURIUS, PHORMIO,
LACRITUS, PANTÆNETUS, NAUSIMACHUS, BŒOTUS,
SPUDIAS, PHÆNIPPUS, AND FOR PHORMIO.

PHILLIPS ACADEMY,
ANDOVER, MASS.
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Translated, with Notes and Appendices,

BY

CHARLES RANN KENNEDY.

2704
PHILLIPS ACADEMY,
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THE

ORATIONS OF DEMOSTHENES.

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THE ORATION AGAINST TIMOCRATES.

THE ARGUMENT.

This was a speech in support of an indictment preferred against Timocrates for passing an improper law. It was composed by Demosthenes for Diodorus, the same person for whom he wrote the speech against Androtion, and who in this case, as in the former, was associated in the prosecution with his friend Euctemon. The circumstances of the case were as follows:—

Hostilities had broken out during the Social War between Athens and the Persian king; the Athenians sent an embassy to Mausolus, Prince of Caria, to complain of some attack which he had made upon their islands in the Archipelago. At the head of the embassy were Androtion, Melanopus, and Glaucetes, who, sailing in a ship of war, captured on their way a merchant ship of Naucratis, and brought it home with them to the Piræus. Naucratis being an Egyptian city, in the dominions of the Persian king, the vessel was condemned by the Athenians as a lawful prize, and the cargo ordered to be sold. The proceeds, nine talents and a half, instead of being paid at once, as they should have been, into the public treasury, were kept by the ambassadors in their own hands. After some lapse of time, the government being in want of money, inquisitors were appointed to discover all concealed property belonging to the state. Euctemon gave information, in consequence of which the ambassadors were required to pay this sum of nine talents and a half. Not having paid it at the close of the year, they became chargeable with double the debt, and, in default of payment, were liable to imprisonment. At this crisis their friend Timocrates came forward with a law, framed, as the prosecutor contends, for the sole purpose of helping them out of their difficulty. The law which he proposed and contrived to pass was to the following effect:—That any person who had been, or should hereafter be condemned to imprisonment for default in paying a debt to the state, should be allowed to put in bail, and respited until the ninth Prytanea (or Presidency): if the debt was not then paid by him or by his bail, he should be imprisoned, and the property of the bail should be con-

fiscated. There was a clause excepting from the operation of the law farmers of the taxes and lessees of the public revenue.

To obtain a repeal of this law and the punishment of its author, Diodorus and Euctemon adopted the means which the Athenian constitution afforded them, and preferred an indictment. They contended, first, that the motives of Timocrates in proposing the law were not to promote the public good, but to serve himself and his private friends; secondly, that the law was intrinsically a bad one, being unconstitutional in its character and mischievous in its tendency; and further, that it had been passed in an illegal manner, the conditions required by the laws of Athens not having been complied with. The orator enters into an elaborate argument to establish these positions, referring to various existing statutes, to which the law in question was repugnant, and showing that it was impossible for it to work well either in a financial or in any other point of view. He also, according to the practice of the Athenian courts, assails the characters of Timocrates and Androtion, avowing that his own personal enmity to the latter was one of the motives which induced him to prosecute. Several passages of the speech against Androtion are here repeated, as the reader will perceive. For information as to the law and other matters illustrative of this speech, the reader is referred to Volume ii. Appendices IV. V. and VII.; Volume iii. Appendix VIII.

The date of the speech was B.C. 353.

Timocrates himself must admit, men of the jury, that he has no one but himself to blame for the present prosecution. For with intent to deprive the state of a considerable sum of money, men of Athens, he introduced a law, in violation of all the existing laws, which was neither proper nor just. In what other respects it will be mischievous and detrimental to the commonwealth, should it be confirmed, you will learn in detail presently from my speech; but the most important point which I have to urge, and that which most obviously suggests itself, I shall not hesitate to declare—it is this. The decision which you give upon oath on every question is rendered null and void by the defendant's law, not to confer any advantage upon the state—that's impossible, when it makes the courts of justice, which are known to be the supports of the constitution, unable to enforce the legal penalties of crime—but in order that some of that clique, who have for a long time been living on you and pillaging you to an enormous extent, may escape refunding even what they are clearly proved to have stolen. And so much easier is it to pay court to certain private individuals, than to stand up for your rights, that the defendant has received

money from those men, and did not introduce this law for them till he got it, whilst I, acting on your behalf, instead of receiving anything from you, run the risk of paying a thousand drachms. It is the practice in general with those who undertake any public matter, to tell you that the subject on which they are addressing you is a most serious one, and peculiarly worthy of your attention. It appears to me that, if any one ever has said this with justice, I may properly say it now. For no one will dispute, I imagine, that for the blessings which the commonwealth enjoys, for her popular constitution and her freedom, she is principally indebted to the laws. Well; this is the very question now before you, whether all the other statutes against public offenders are to be invalidated, and this one to be established, or whether, on the contrary, this is to be repealed, and the others allowed to remain in force. Such (to speak in a short compass) is the matter upon which you have now to decide.

You might wonder perhaps why a person who has lived quietly all the rest of his life (as I believe I have done) is now found engaged in trials and public prosecutions. I am anxious therefore to give you a short explanation, and it will not be irrelevant. You must know, men of Athens, I came into collision with a vile, quarrelsome, abominable fellow, with whom at last the whole city has come into collision; I mean Androtion. I have been injured by him far more grievously than Euctemon has; for Euctemon suffered only pecuniary damage; whereas I, if Androtion had succeeded in his attack, should have been deprived not only of my property, but of my life; nay, even to part with life, which is open to mankind in general, would not have been easy for me. He accused me of a thing which a man of right feeling would hardly like even to mention—that I had killed my own father: he then got up an indictment for impiety, and brought me to trial: in this, however, he failed to get a fifth part of the votes, and incurred the penalty of the thousand drachms; I obtained my just acquittal, principally through the favour of the Gods, and, under them, through the jury of my country. The man, who had wickedly brought me into such peril, I regarded as an irreconcileable enemy: and seeing that he had done public wrong to the commonwealth, both in the collection of the property tax, and in the manufacture of the

sacred utensils,[1] and that he retained in his possession and refused to pay considerable sums belonging to the Goddess and the heroes and the state, I took proceedings against him in conjunction with Euctemon, thinking I had found a good opportunity at the same time to redress the grievances of the commonwealth and obtain satisfaction for my own. So should I wish now both for myself to accomplish my own objects, and for the defendant to suffer what he deserves. When the facts were beyond all dispute, the council having pronounced sentence of condemnation, the assembly having given a whole day to that single question, and besides this, two tribunals composed of a thousand and one jurors having pronounced their verdict—when there was no longer any pretext for keeping you out of the money—Timocrates the defendant treated all the proceedings with such contempt as to propose this law, by means of which he deprives the Gods of their sacred property and the state of hers, and invalidates the decisions of the council and the assembly and the court of justice, and has enabled any one that pleases to plunder the state with impunity. For all this the only remedy that we can see is, to indict the law, bring it before you, and endeavour to repeal it. I will in a few words explain the transaction to you from the beginning, that you may the more clearly see and comprehend the iniquitous character of the law itself.

Aristophon moved a decree in the assembly, that inquisitors[2] should be appointed, and that, whoever knew of any one having in his possession any sacred or public property of the state, should give information to them. After this Euctemon gave information, that Archebius and Lysithides, who had been trierarchs, had in their possession the proceeds of a cargo from Naucratis, estimated at nine talents and thirty minas. He communicated with the council; an order of council was drawn up; an assembly was thereupon held, and the people voted for a hearing of the question. Euctemon got up, and explained in the course of his speech, how the ship was taken by the trireme which carried Melanopus and Glaucetes and Androtion on their embassy to Mausolus; how the people to whom the cargo belonged presented their peti-

[1] See the Oration against Androtion, Vol. iii. page 160
[2] See Vol. iii. Appendix VIII. page 341.

tion,[1] and how you rejected it on the ground that the cargo was not friendly. He then reminded you and read the laws, which declare that in such a case the property must be confiscated. You all thought that what he said was just. Androtion, Glaucetes, and Melanopus jumped up, and (pray watch if I am speaking the truth) they poured out a torrent of complaint and abuse, exonerated the trierarchs, confessed that they had the money themselves, and desired that the inquisition should proceed against them. You heard what they said, and, as soon as they had done bawling, Euctemon advised—nothing could be fairer—that you should get the money from the trierarchs, and they should have recourse to the persons who had it, and, if there was any dispute, you should direct an interpleader, and the party who lost the verdict should be deemed the state-debtor. They indict the decree; it came into court; to cut the matter short, it was considered to have been moved legally, and the verdict was in its favour. What then ought to have been done? The state should have had the money, and the party defrauding her should have been punished, and surely there was no occasion for any law. Well; up to this point, you had sustained no injury from Timocrates, the present defendant. Subsequently, however, he took everything which I have mentioned upon himself, and it will appear that you have been injured solely by him; for by lending himself to the artifices and trickeries of those other men, and making himself their tool, he took their guilt upon his own shoulders, as I will show you clearly. I must first remind you of the dates, and the occasion upon which he proposes his law; for it will appear that he has treated you with mockery and insult. It was the month of Scirophorion when those men were beaten in their indictment of Euctemon: hiring then the present defendant, and not being even in a condition to do justice to you, they put some tattling fellows in the market-place to say, that they were ready to pay the single sum, but would not be able to pay the double. This was an impudent conspiracy, a contrivance that the present law might be passed without observation. The fact itself proves my assertion: for they did not pay you at that time a drachm of

[1] The owner of the goods placed a bough, as the symbol of petition, upon the altar, which stood at the entrance of the theatre.

the money, while by a single law they nullified a plurality of existing laws, and by a law which, of all that ever were passed before you, is the most shameful and scandalous.

I have something to say about the statutes, which allow indictments of this kind, and then I will proceed to the law itself which I have indicted: when you have heard these explanations, you will be in a better position to understand the rest of the case. In our existing laws, men of Athens, is clearly and accurately defined everything which is required to be done for laws about to be enacted. And first of all, a time is specified at which laws must be proposed; and even then it is not allowed to be done in what manner the individual proposer pleases, but he is directed first to write out his law, and put it up before the statues of the Heroes, that every man may have an opportunity of seeing it, and he is required also to propose the same law for all, and further, to repeal those laws which are inconsistent with it; and there are other directions, which there seems no necessity to advert to now. If a man violates any one of these, the lawgiver allows any other person to indict him. If Timocrates had not offended in all these particulars, if he had not violated all these conditions in introducing his law, one would have preferred a single accusation against him, whatever that might have been. As it is, however, I must take the charges one by one, and speak separately of each. I will begin with his first offence, and show how he attempted to legislate in violation of all the existing laws; after that, I will take the other parts of the case in what order you like. Here—take these statutes and read them. It will appear that he has complied with none of these requisitions. Attend, men of the jury, to the laws while they are read.

REVISION OF LAWS.

"In the first presidency, on the eleventh day, in the assembly, when the crier has pronounced the prayer, the votes of the people shall be taken upon the laws, first, those which concern the council, next, the general laws, then those which are enacted for the nine archons, afterwards those relating to the other magistrates. The first question shall be, Who are content with the existing laws concerning the council? the next, Who are not content? and so on for the

general laws. And the votes upon the revision of laws shall be taken according to the established legal practice. If any of the existing laws be condemned, the presidents, in whose term of office the condemnation has taken place, shall appoint the last of the three assemblies for the consideration of them; and the committee of council, who shall be in office on that assembly-day, are required, immediately after the sacrifice, to put the question concerning the law-revisors, in what manner they shall hold their session, and how their pay is to be provided: and the law-revisors shall be chosen from those who have sworn the Heliastic oath. And if the presidents shall not appoint the assembly, or if the committee of council shall not put the question according as the statute prescribes, every one of the presidents shall forfeit a thousand drachms to Minerva, and every one of the committee shall forfeit forty drachms to Minerva; and an information shall lie against them to the judges, in like manner as when a man holds an office being indebted to the state, and the judges shall bring the parties informed against into court according to law, or they shall lose their promotion to the Areopagus, for putting down the amendment of the laws. Before the assembly any Athenian that pleases shall write out the laws which he proposes, and expose them before the statues of the heroes, so that, according to the number of the proposed laws, the people may determine what time shall be allowed for the law-revisors: and whosoever proposes a new law shall write it on a white board and expose it before the statues of the heroes every day until the assembly is held. And the people shall, on the eleventh day of the month Hecatombæon, elect five men from the whole body of Athenian citizens, to defend the laws proposed to be repealed before the law-revisors."

All these laws have been established for a long period, men of the jury, and have often proved themselves to be of practical advantage, and no man ever questioned their wisdom; at which I am not surprised; for they command nothing which is cruel or oppressive or tyrannical, but, on the contrary, prescribe everything to be done in a fair and constitutional manner. In the first place, they give you the power of deciding whether a new law ought to be introduced, or whether the established laws are, in your opinion, suffi-

cient. Secondly, if you vote for the introduction of a law, they do not order it to be passed immediately, but appoint the third assembly; and not even in this have they given permission to pass the law, but only to consider on what terms you will appoint the session of the law-revisors. In that interval they require those who wish to introduce the laws to expose them before the statues of the heroes, so that whoever pleases may examine them, and, if he discover anything inexpedient for you, may inform you of it, and oppose it at his leisure. Not one of all these conditions has the defendant Timocrates performed: he neither exposed the law to view, nor gave those that liked the opportunity to read and oppose it, nor waited for any of the periods prescribed in the laws; but when the assembly, in which you voted upon the laws, was the eleventh of Hecatombæon, he brought in his law upon the twelfth, the very next day, (although it was the festival of Saturn, and the council therefore was adjourned,) having, in conjunction with persons who mean no good to you, contrived that law-revisors should sit under a decree, upon a pretence of the Panathenæa. I will read you the decree itself which was passed, to show you that they did all these things by arrangement, and none of them by chance. Take you the decree, and read it to them.

THE DECREE.

"In the first presidency, to wit, that of the Pandionian tribe, on the eleventh day thereof, Epicrates moved: In order that the sacrifices may be offered, that the ways and means may be sufficient, and whatever is wanting for the Panathenæa may be supplied, let the presidents of the Pandionian tribe impanel law-revisors to-morrow, and let the law-revisors be a thousand and one in number, selected from those who have taken the oath, and let the council be associated with them in the revision."

Observe, in the reading of the decree,[1] how artfully the framer of it, under pretext of financial arrangements and the wants of the festival, without adverting to the time prescribed by law, puts in a clause for proceeding with the revision

[1] I adhere to the reading of Bekker, notwithstanding that it is disapproved by so many commentators. It is a loose way of saying, "Observe how artfully *it appears* from the decree that," &c.

to-morrow: assuredly, from no desire to increase the splendour of the festival, (for nothing was omitted or unprovided for,) but in order that this statute, which is now upon its trial, might be passed and become law without any mortal having notice or making opposition. Here is the proof. When the law-revisors were sitting, no law good or bad was brought in by any man concerning the matters specified, the ways and means and the Panathenæa; but concerning matters on which the decree did not require legislation and the laws forbid it, Timocrates, the defendant, passed his law without the least disturbance. The time named in his decree he held to be more binding than the time mentioned in the laws; and, while you were all enjoying a holiday, and though there is a law to do no wrong to one another either in public or in private at such a period, and to transact no business which does not relate to the festival, he did not scruple (as I shall show you) to inflict an injury, not upon a chance individual, but upon the whole commonwealth. Is it not shameful that a man, who knew the statutes, which you have all just heard, to be in force—who knew also of another statute declaring that no decree, even though it be legal, shall be of greater force than a law—should frame and propose to you a law in pursuance of a decree, which itself he knew to have been illegally moved? Is it not cruel, that, when the state has secured us all against the suffering of wrongs or grievances at this period by the institution of a holiday, she should herself have obtained no such security against Timocrates, but have suffered on this very holiday the most grievous wrong? For how could a private individual more deeply have injured the state, than by overthrowing the laws by which she is governed?

That the defendant has done none of the things which he was bound to do, and which the laws require, you may know by what I have already said. His offence however does not consist in this only, that he transgressed the time prescribed by the law, and destroyed the possibility of your deliberating and considering about these matters, by proceeding with his legislation during a holiday; but it consists further in this, that he has introduced a statute repugnant to all the existing statutes, as I will show you plainly in a few minutes. Take and read me first this statute, which expressly forbids

the introduction of any repugnant law, and, if such a one be introduced, requires that it should be indicted.[1] Read.

THE LAW.

"It shall not be lawful to repeal any of the established laws, except at the session of the law-revisors; and then any Athenian that pleases shall be at liberty to repeal a law, proposing another in its stead. And the committee of council shall put the question upon such laws, first upon the established law, whether the people of Athens approve of it or not; and afterwards upon the proposed law. And whichever the law-revisors shall vote in favour of, that one shall be in force. And no one shall be at liberty to propose a law contrary to any of the established laws. And if any one, having repealed any of the established laws, pass another in its stead not expedient for the people of Athens, or contrary to any of the established laws, an indictment shall lie against him according to the statute provided in case of a person proposing an improper law."

You have heard the statute. Among many wise laws which the state possesses, there is none, I think, which has been framed more admirably than this. Only observe, how just, how favourable to the people its provisions are. It forbids the introduction of a law contrary to the existing laws, without repealing the one first established. Why? First, that you may be able to give a just verdict with a safe conscience. For if there were two inconsistent laws, and any

[1] The policy of the Athenian lawgiver was not to allow two inconsistent laws to remain together in his code; and there was no such thing among the Athenians as the repealing of a statute by implication. In the multiplicity of our modern Acts of Parliament, it has not unfrequently occurred, that an enactment has been passed at variance with some previous one, of which it makes no mention, or which, at all events, it does not expressly repeal. The rule then is, that, if the negative of the first is necessarily implied, the second operates as a repeal of the first. For example, where a statute imposed a fine of 100*l.* and three months' imprisonment for seducing artificers, and a subsequent statute inflicted a penalty of 500*l.* and twelve months' imprisonment for the same offence, it was decided that the former was virtually repealed by the latter. The English courts lean against such constructive repeals, and strive, if possible, to reconcile two apparently conflicting statutes. If the repugnancy however cannot be got over, then the rule prevails, *leges posteriores priores contrarias abrogant.*

parties came to trial before you, either on a public or a private question, and each of them claimed the verdict, producing a different law, you could not, of course, decide in favour of both; that is impossible: nor could you decide for either one of them with due regard to your oaths; for such decision violates the repugnant law, which is equally valid with the other. Against such a mischief the legislator provided by this clause. But he had a further motive in it. He wished to make you guardians of the laws; for he knew that the other safeguards which he has provided for them there are various ways of eluding. The public advocates, whom you appoint, may be persuaded to hold their tongues. He requires the laws to be exposed to view, that all men may have notice. It may possibly happen that persons who would oppose them remain in ignorance, without some previous notice, while persons who pay no attention to the subject read them. But, it may be said, every man may indict a law, as I have done now. Yes; but, if a man gets rid of the prosecutor, the state is still cheated. What then is the only proper and firm safeguard of the laws? You, the people: for no man can deprive you of the power of judging and testing what is right; no man can by deceit or corruption persuade you to pass the worse law instead of the better. On these accounts, the legislator blocks up all the paths of injustice, checking the evil-disposed, and not letting them stir a step. All these wise and righteous enactments Timocrates cancelled and expunged, as far as it lay in his power, and introduced a law contrary, I may say, to all the existing laws, not reading one in comparison with it, not repealing the opposite, not giving you a choice between them, not performing any other of the legal requisites.

That he has become amenable then to the indictment by having brought in a law repugnant to the existing laws, I imagine you are all convinced. To show you what sort of a law he has introduced, and what sort of laws he has violated, the usher shall first read you the defendant's law, and then the others, with which it is inconsistent. Read.

THE LAW.

"In the first presidency, to wit, that of the Pandionian tribe, on the twelfth day thereof, Timocrates moved: If any of the

persons who are indebted to the state has been or shall hereafter be condemned, pursuant to a law or to a decree, to suffer the penalty of imprisonment, it shall be lawful for him, or for another person on his behalf, to put in such bail for the debt as the people shall approve, to be security for payment of the sum which he owed, and the committee of council are hereby required to take the votes of the assembly,[1] when any one wishes to put in bail; and the person who has given bail, if he pays to the state the money for which he gave the bail, shall be released from imprisonment; but if neither he nor his bail shall have paid the money in the ninth presidency, the party released on bail shall be imprisoned, and the property of the bail shall be confiscated. Provided that, in the case of farmers of the taxes and their sureties and the collectors, and lessees of the leasable revenues and their sureties, the state shall be at liberty to recover her dues according to the established laws. And if any one is indebted in the ninth presidency, he shall pay his debt in the ninth or tenth presidency of the following year."

You have heard the law. Pray remember these parts of it—first, the words "if any of the persons who are indebted has been or shall hereafter be condemned to suffer imprisonment"—next, the clause which excepts from the law the farmers of taxes and lessees of the revenue and their sureties. The whole statute is contrary to all existing statutes, but especially those parts of it, as you will perceive when you hear him read.

Recite the laws to them. Read.

THE LAW.

"Diocles moved: The laws enacted before Euclides[2] in the time of the democracy, and such as were enacted in the Archonship of Euclides and are recorded, shall be in force. Those which were enacted after Euclides or shall hereafter be enacted shall come into operation from the days on which they were respectively passed, except where a time is expressly appointed, in whose archonship any law is to commence.

[1] Pabst, *bestätigen*, following Reiske and Schäfer. But then, instead of *ὅταν τις καθιστάναι βούληται*, one would rather have expected *ὅταν ὁ δῆμος χειροτονήσῃ*.

[2] See my article *Νόμος* in the Archæological Dictionary.

And the secretary of the council shall affix his mark to the laws which are now established within thirty days; and for the future the secretary for the time being shall immediately annex a clause, that the law shall come into operation from the day on which it was passed."

Admirable as were the existing laws, men of the jury, the law which has just been read defined (as it were) and confirmed them. For it declares that every one shall come into force from the day when it was passed, except where a date is expressly mentioned, and then it shall commence from the prescribed date. Why so? Because to many statutes a clause had been annexed, "that the act should come into operation in the archonship succeeding the present." The person therefore who afterwards proposed this law which has been read, framing it at a later period, thought it not right that statutes which themselves contained a postponing clause should be carried back to the day of their enactment, and made to come in force before their respective authors desired. See how contrary to this law is the one which the defendant has passed. The one declares, that the prescribed date, or the day of enactment, shall be the starting point: Timocrates inserts a clause, "if any person has been condemned," referring to past transactions; and even this he does not limit, by naming any archonship as the term of commencement, but has made his law come in force not only before the day of its enactment, but before any of us were born; for he has taken in the whole of the past indefinitely. You ought, Timocrates, either never to have framed your law, or to have repealed the other; not to have thrown everything into confusion, to further your own purposes.

Read another law.

THE LAW.

"Nor concerning the disfranchised shall there be any proposal, for restoration of their franchise, nor concerning those who are indebted to the Gods or to the Athenian treasury, for remission of their debts or for a composition, unless permission has been granted by not less than six thousand Athenians, who shall think fit to vote in that behalf by ballot. And then it shall be lawful to make a proposal to that effect, in such manner as seems good to the council and the assembly."

Here is another law, forbidding any speech concerning disfranchised persons or state-debtors, and any proposal for remission of their debts or for composition, unless liberty has been granted, and that by the votes of not less than six thousand persons. The defendant frames an express clause, that, if any debtor has been condemned to imprisonment, he shall have his release upon finding persons to be his bail, without there having been any proposal or any liberty of speech granted in that behalf. And the law, even when a man has obtained permission, does not allow him to proceed as he pleases, but in such manner as the council and the people approve: Timocrates was not content with a simple breach of law, in speaking and introducing a bill upon these matters without leave, but he went further, and, without saying a word upon the subject to the council or the people, introduced a law irregularly and clandestinely, after the council had broken up, and while the rest of the people were taking a holiday on account of the festival. It was your business, Timocrates, knowing this law which I have read, if you wished to do what was right, first to petition the council for an audience, then to bring the matter before the assembly, and, in the event of all the Athenians giving it their sanction, to draw up and propose your bill; but even then you should have waited the time prescribed by the laws. Proceeding thus, even had any one attempted to show that your bill was injurious to the state, you would at all events have been thought, not to have any sinister design, but to have erred in judgment only. Now, by your clandestinely and hastily and illegally, I will not say passing, but foisting your law into the statute-book, you have deprived yourself of all excuse; for those are excusable who err unintentionally, not those who have nourished evil designs, as you are plainly shown to have done. However, I will speak of this presently. Now read the next law.

THE LAW.

"If any one petition in the council or in the assembly upon a sentence which has been passed by a court of justice, or by the council, or by the assembly, if it be the party amerced who petitions before he has paid the fine, an information shall lie against him, in the same manner as if any one being

indebted to the treasury sits on a jury; and if another person petition on behalf of the party amerced, before he has paid the fine, all the property of such person shall be confiscated; and if any member of the committee of council allow the question to be put for any one, whether for the party amerced, or for any other person on his behalf, before he has paid the debt, such member shall be disfranchised."

It would be a tedious thing, men of the jury, if I dwelt upon every law to which the defendant's is repugnant; yet if there is any one worth discussion, this one is which he has just read. For the author of this law, men of Athens, knew your humane and lenient disposition, and saw that by reason of it you had on many occasions before then submitted to serious losses. Wishing therefore to leave no excuse for the miscarriage of the public interests, he did not choose that persons who by legal verdict and judgment had been convicted of misconduct should avail themselves of your good nature, and have the advantage of petitioning and supplicating you in their distress; but positively forbade either the party himself or any one else to petition or speak upon such a matter, making it imperative to do justice in silence. If you were asked now, for which persons you would be more likely to do anything, for those who asked a favour, or those who gave a command, I am sure you would say, for those who asked a favour; for this is the part of kind-hearted men, the other that of cowards. Well: all laws command what is needful to be done; petitioners ask it as a favour. If then it is forbidden to petition, could it be allowed to introduce a law, which implies command? I should think not. It would be shameful, if, in cases where you have deemed it right to abstain even from acts of grace, the purposes of certain persons might be accomplished against your will.

Read the law next in order.

THE LAW.

"Concerning matters upon which there has been a judgment in a suit or interpleader, or an account rendered, before a legal tribunal, whether the proceeding has been private or public, and concerning property which the treasury has sold, it shall not be lawful for any of the magistrates to bring a question into court for trial, or put any question to the vote;

nor shall they permit any accusation to be preferred which is forbidden by the laws."

Timocrates, as if he were drawing a deposition to prove his offence, in the very beginning of his law puts a clause contrary to these provisions. The statute cited forbids the reopening of matters which have once been decided by a legal tribunal. Timocrates enacts that, if any one has been condemned in pursuance of a law or a decree, the people shall deal with the matter in his behalf, so that the decision of the tribunal may be repealed, and the amerced party may give bail. And the statute says, no magistrate shall even put a question contrary to these provisions; whereas Timocrates requires the committee of council, if any one puts in bail, to present the bail to the assembly,[1] and adds the words, "when any one wishes."

Read another law.

THE LAW.

"All such judgments and awards as have been given in accordance with the laws in the time of the democracy shall be valid."

Timocrates says they shall not; at least in the case of those persons who have been condemned to imprisonment.

Read.

THE LAW.

"And all things which have been done under the Thirty, and every judgment which has been given either in public or in private, shall be null and void."

Stop. Tell me, what would you all say was the most dreadful event you ever heard? What would you most deprecate the repetition of? Surely, the things that were done under the Thirty Tyrants. So at least I should imagine. And this statute, providing (as it appears to me) against such a contingency, declared that everything done in their time should be null and void. The defendant pronounces the acts of the democracy to be just as illegal as you pro-

[1] *I. e.* that the bail may be justified; for which purpose the *ἐπιχειροτονία* was required by the statute. See ante, page 12, note 1. Pabst takes *ἐπιψηφίζειν* in the same sense nearly as he took *ἐπιχειροτονεῖν* before.

nounce the acts of the tyranny to be; at all events, he makes them equally invalid. What then shall we say, men of Athens, if we allow this law to be confirmed? That the tribunals, which under a democratical government are composed of sworn men, commit the same crimes as those which existed under the Thirty? Would not that be shocking? Or that they have given righteous verdicts? If so, what reason shall we assign for passing a law to rescind their judgments?—unless one can say, it was an act of madness—it is impossible to allege any other reason.

Read another law.

THE LAW.

"And it shall not be lawful to propose any statute applying to a particular man, unless the same be applied to all Athenians, with the sanction of not less than six thousand citizens, who shall so determine by ballot."[1]

It allows no law to be proposed unless it be the same for all the citizens. Its language is noble and constitutional. For, as every one partakes equally in other political advantages, so in this too the legislator thinks it right to establish equality. On whose account the defendant introduced his law, you see as well as I do: but besides, he himself confessed that he had proposed a law not applying to all, when he inserted a clause excepting from the operation of his law the farmers of taxes and lessees of the revenue and their sureties. When there are persons whom you exclude, you cannot have proposed the same law for all. You can hardly allege

[1] As the text now stands, the meaning of the law is as follows:—Although a *privilegium* strictly so called, that is, a law applying to one or more individuals, is not allowable, there may be a *privilegium* applying to a class, if passed by six thousand citizens voting by ballot. For example, a law could not be passed that Androtion should be released on bail; but a law might (with the requisite assent) be enacted, that a certain class of persons, to whom Androtion belonged, *ex. gr.* state debtors under sentence of imprisonment, should be released on bail.

Some commentators however have thought the text to be corrupt. (See the Apparatus Criticus.) Petit's reading ἐὰν μὴ ψηφισαμένων makes it agree with Andocides De Mysteriis, 87. (See the Oration against Aristocrates, Vol. iii. page 195.) But who can say whether one or other of the orators does not misquote the law? The text, as it stands, better suits the argument of Demosthenes. If Petit's reading be correct, the orator's objection scarcely applies.

this, that of all persons who are condemned to imprisonment the farmers of taxes are the greatest or most heinous offenders, and therefore you excluded them alone from the benefit of the law. For surely those commit much greater offences, who betray any of the public interests, or who ill-use their parents, or who enter without pure hands into the market-place; to all of whom the existing laws denounce imprisonment, while yours gives them a release. But here again you disclose the parties in whose favour you proposed the law: for, because their debt occurred, not from a farming of taxes, but from peculation, or rather from plunder, therefore, I imagine, you did not care about the farmers of the taxes.

Many other excellent laws might be cited, to all of which the defendant's law is repugnant. But perhaps, if I touched upon them all, I should be pushed out of the argument, that this law is altogether injurious to the state; and you will equally consider it indictable, if it be repugnant to only one of the existing laws. What course then shall I take? I will pass by the other laws, and—first noticing one which Timocrates himself formerly passed—I will proceed to that part of the accusation, in which I undertake to show that his law, if confirmed, will be highly detrimental to the commonwealth. Now to have introduced a law contrary to the laws of other men, is a grave offence, yet it requires another party for accuser; but for a man to legislate in contradiction to a law passed by himself, this makes him his own accuser. That you may see this is the case, he shall read you the very law which Timocrates proposed; and I will be silent. Read.

THE LAW.

"Timocrates moved:—If any Athenians, upon an impeachment by the council, either now are in prison, or shall hereafter be put in prison, and their condemnation be not delivered to the judges by the secretary of the presidency, pursuant to the practice upon impeachments, the Eleven shall bring them into court before the judges within thirty days from the day on which they received them in custody, if the state of public business does not prevent it; otherwise, as soon as possible. And any Athenian that pleases, to whom such right belongs, may prosecute. And if the party accused be convicted, the Heliastic tribunal shall impose such penalty,

corporal or pecuniary, as they consider him to deserve; and, if sentenced to a pecuniary penalty, he shall be imprisoned until he has paid whatsoever sum he was condemned to pay."

Do you hear, men of the jury? Read them the last words again.

THE LAW.

"And if sentenced to a pecuniary penalty, he shall be imprisoned until he has paid—"

Enough. Is it possible to propose two more opposite enactments than these?—that convicted persons shall be kept in prison until they have paid, and that the same persons shall give bail and not be put in prison? Well: this charge is brought against Timocrates by Timocrates, not by Diodorus, nor by any other of his countrymen, numerous as they are. But what temptation do you think a man could resist, or what would he scruple to do for lucre's sake, who has thought proper to legislate at variance with himself, when variance even with others is prohibited by law? Such a man, as it appears to me, is impudent enough to do anything. As therefore the laws command, that malefactors of other kinds, who confess, should be punished without trial; so, men of Athens, when you have caught the defendant playing foul tricks with the laws, you ought to find him guilty without allowing him to speak or to be heard: for he has confessed his crime by proposing this law at variance with the other which he passed before.

That his law is inconsistent with those just cited, and with those before mentioned, and, I may almost say, with every law of the country, is plain, I imagine, to you all. I wonder, indeed, what he can possibly venture to say upon the point. He will not be able to show that his law is not contrary to the other laws; nor can he persuade you that he overlooked it through inexperience, being no politician; for he has been seen long ago both framing decrees and introducing laws for hire. Nor yet is this course open to him, to confess that the thing is a crime and ask for pardon; for he is shown to have proposed his law not unintentionally, not in behalf of the unfortunate, not for relations and connexions of his own; but intentionally, and in behalf of persons who had grievously injured you, and who were in no way related to him, unless he means to say that he regards his hirers as relations.

I shall now proceed to show, that he has introduced a law not suitable or advantageous to the commonwealth. You will all agree, I take it, that a law, to be good and useful to the multitude, should, in the first place, be framed simply and intelligibly to all, and it should be impossible for one man to put this construction upon it, and another that; secondly, what is to be done by virtue of the law should be practicable; for, however well drawn, if it prescribed anything impossible, it would perform the work of a prayer, not of a law. In addition to this, it should plainly appear that it allows no indulgence to wrong-doers. If any one thinks it is a feature of a popular government for the laws to be mild, let him consider to what persons they should be mild; and, if he takes the right view, he will see they should be mild to persons about to be tried, not to persons who have been convicted; for, in the former case, it is uncertain whether a man has not been unjustly calumniated, whereas the latter can no longer deny that they are rogues. Of the qualities which I have just mentioned, you will see that the law of Timocrates does not possess a single one, but exactly the opposite. This may be shown in many ways, but most clearly by going through the articles of the law itself; for it is not good in one part and faulty in another; but from the beginning, from the first syllable to the last, it is framed entirely to your prejudice. Take the indictment, and read them the statute as far as the first clause. That will be the easiest way for me to show, and for you to catch, what I mean.

THE LAW.

"In the first presidency, to wit, that of the Pandionian tribe, on the twelfth day thereof, Aristocles of Myrrhinus, of the committee of council, put the question, Timocrates moved: If any of the persons who are indebted to the state has been or shall hereafter be condemned, pursuant to a law or to a decree, to suffer the penalty of imprisonment, it shall be lawful for him, or for another person on his behalf, to put in such bail—"

Stop. You shall read clause by clause by and by.

This, men of the jury, is about the most shameful of all the articles in the statute. I believe no other man, introducing a law for the purpose of its being used by his fellow-

citizens, would dare to rescind the judgments which have been pronounced according to the pre-existing laws. Yet Timocrates, the defendant, has done this, impudently and without the least disguise; for he says expressly, "If any of the persons who are indebted to the state has been or shall hereafter be condemned, pursuant to a law or a decree, to suffer the penalty of imprisonment." If he had only advised what was proper with respect to future cases, he would have done no wrong; but to introduce a law to rescind what a court of justice has decided, and what is definitively settled—is not this shameful conduct? As if a man, after suffering the defendant's law to be confirmed, were to frame another to the effect following:—"If any persons, having become debtors, and having been condemned to the penalty of imprisonment, have put in bail according to the law, they shall not have the benefit of their bail, nor shall it hereafter be lawful to release any person on bail." No sane man, I take it, would do this; and Timocrates, in doing what he did, committed a wrong. He ought, if he deemed the thing good, to have proposed his law in reference to the future; not to mix up future offences with past, certain with uncertain, and then prescribe the same judgment for all. Is it not shocking to award the same measure of justice to persons convicted of former crimes against the state, and to persons of whom it is not known whether they will ever do anything worthy of trial?

You may see in another way, how shamefully he has acted in passing a retrospective law, if you will only reflect what it is that makes law differ from oligarchy, and how it comes about that those who choose to be governed by laws are held to be honest and independent and worthy people, while those who live under oligarchies are unmanly and slavish. You will find this the true and obvious explanation; that, among people who live in oligarchies, every man has the right[1] both to undo what has been done, and to order what

[1] That is, there is no law to prevent him. What the orator says is not to be understood (as Schäfer thinks) of the rulers only. Every man has the right, if he can only enforce it. By putting it in this way, the orator makes the contrast between oligarchy and democracy the more striking. In the former there is no law, and therefore no security either for the past or the future. Compare the argument in the Leptinea, Vol. iii. page 9.

he pleases for the future; whereas laws give direction of what is necessary for the future, being enacted under the persuasion that they will benefit those who live under them. And yet Timocrates, legislating in a democratical state, carried into his law the iniquity of an oligarchy, and thought proper to assume over the past a power greater than that of the convicting jurors.

Nor is his arrogance confined to this. He goes on to say, "or if any one shall hereafter be condemned to the penalty of imprisonment, it shall be lawful for him, on putting in bail as security for payment, to be released." He ought, if he regarded imprisonment as a cruel thing, to have enacted, that no man who offers bail to you shall be sentenced to imprisonment; not to give him his discharge on bail when he finds your sentence of imprisonment already passed, and a bad feeling excited against you in the convicted party. He introduced his law in this ostentatious manner, as if to show that he would release people though you had thought fit to imprison them. Does any one think a law beneficial to the commonwealth, which is to overrule the judgment of a legal tribunal, and which will require persons not on their oaths to rescind the verdicts of sworn jurors? I believe no one does. Well then; both these consequences, it is plain, are involved in the defendant's law; therefore, if each of you has a regard for the constitution, if you think that effect should be given to your verdicts upon matters which you have decided upon oath, you must repeal a law of this description, and not suffer it to receive confirmation now.

He was not content with invalidating the penal sentences of the courts. You will find that even the regulations which he himself made in his law, the terms which he imposed upon the condemned parties, even these he has not framed simply or honestly, but just as a man would do who was most anxious to cheat and delude you. Only see how he has drawn them up. "Timocrates moved"—it says—"If any of the persons who are indebted to the state has been or shall hereafter be condemned, pursuant to a law or to a decree, to suffer the penalty of imprisonment, it shall be lawful for him, or for another person on his behalf, to put in such bail as the people shall approve, to be security for payment." Mark where he jumps to from the court and the sentence. To the people,

stealing off the guilty party, and preventing his delivery to the Eleven. For what magistrate will deliver up the debtor? which of the Eleven will receive him—when this statute orders that he shall put in bail before the people, and it is impossible that there should be an assembly and a court at once on the same day, and it nowhere directs that he shall be kept in custody until he has put in bail? What possible objection could there be to his inserting this express clause —"and the magistrate shall keep the condemned party in custody until he has put in his bail"? Was it not a just provision? I am sure you will all say it was. But was it contrary to any law? No: it would have been the only legal clause in the statute. What was the reason then? Only one can be found: his object was, not that parties whom you condemn should pay the penalty, but that they should escape.

How does it go on after that? "He shall put in bail to be security for payment of the sum which he owed." Here again, he has filched away the decuple of the sacred monies, and the half of the public, in all cases where the double is given by the law.[1] How does he do that? By saying, instead of "the penalty," "the sum," and instead of "which becomes due," "which he owed." What is the difference? If it had been "he shall put in bail to be security for payment of the sum which becomes due," he would have comprehended the laws by virtue of which some of the debts are decupled and some doubled; so that the debtors would have been legally compelled both to pay the amount sued for,[2] and to satisfy the penalties accruing by law. Now however, by saying that the bail shall be put in "to be security for payment of the sum which he owed," he fixes the payment according to the plaint and written charge, upon which the party was brought to trial, in which the simple sum which a man owed is always inserted.

Again, after having knocked off so much by the change of words, he adds—"and the committee of council are hereby required to take the votes of the assembly when any one

[1] See my articles *Epibole, Practores, Tamias,* &c. in the Archæological Dictionary. And, for further information, the parts of Boeck's Public Economy of Athens there referred to.

[2] Τὸ *γεγραμμένον*, the sum set down in the plaint or written charge.

wishes to put in bail;" thinking it right throughout the whole of the statute to save the guilty party who has been convicted before you. For, by allowing him to put in bail when he pleases, he has put it in his power never to pay or go to prison. For who won't provide men of straw, and after their rejection by you take himself off?[1] Should any one insist upon his going to prison for not putting in the bail, he will assert that he does put them in, and means to put them in, and he will produce the defendant's law, which orders that he may put in bail when he chooses, and does not say, he shall be kept in custody in the meantime, or require him to be imprisoned if you reject the bail, but is really a sort of preservative to people who wish to do wrong.

"And the person who has given bail," he says, "if he pays to the state the money for which he gave the bail, shall be released from imprisonment." Here again he persisted in the artifice which I mentioned just now, and did not forget it, enacting that the party should be released from imprisonment, not if he paid the penalty which became due, but if he paid the money which he owed.

"But if neither he nor his bail shall have paid the money in the ninth presidency, the party released on bail shall be imprisoned, and the property of the bail shall be confiscated." In this last clause it will manifestly appear that he charges himself with injustice. For he forbade imprisonment, not because he thought generally that it was a shameful or shocking thing for any citizen to be imprisoned, but after robbing you of the opportunity when you might catch the guilty party, he left to you, the injured parties, the name of redress, but took away the reality. And he gave a discharge against your will to persons who retain your money by force, and all but inserted a clause, that it should be lawful for the party to commence an action against the jurors who inflicted the penalty of imprisonment.

What, among all the shameful clauses of the statute, is

[1] "Calumniatorem agere videtur orator. Neque enim liberabitur, nisi approbatis a populo vadibus ex lege Timocratis."—Wolf. Assuming that, according to the true construction of the statute, bail might be offered more than once; still, after failing to justify bail, the party would have to go to prison in the meantime, until he found other bail.

most deserving of indignation, I am about to tell you. Throughout the whole of the law all his provisions are for one who has put in bail, but for a person who has not put in any bail either good or bad, and who does not pay you any regard whatever, he has prescribed no penalty or punishment, but has created the most complete impunity that can be.[1] For example, the time which he has appointed, the ninth presidency, he gives to the person who has put in bail. You may see from this—He proceeds to say, that the property of the bail shall be confiscated, if the debt is not paid; but of course there can be no bail of a person who has not put them in. And while he has obliged the committee of council, who are chosen by lot from the people, to receive the bail when any one offers them, he imposes no obligation upon the public offenders, but, as if they were benefactors, gives them the choice whether they will be punished or not.

How can there be a law more inexpedient for you or more objectionable than this—which, as regards the judgments of past time, puts a veto on what you have decided, and, as regards those of the future, while it orders sworn jurors to inflict penalties, deprives those penalties of their validity; and, in addition to this, gives their franchise to debtors who do not satisfy their obligations; in short, exhibits you as persons whose oaths, whose assessments, whose verdicts, whose punishments, all of whose acts are ineffectual? For my part, I think that if Critias, he of the Thirty, had introduced the law, he would not have framed it in any other manner.

That the law deranges our whole political system, that it overturns everything, and strips the commonwealth of many of her honours; of this too I think you will easily be convinced. Of course you know that our state often owes her safety to her expeditions by land and sea, and you have ere now performed many glorious exploits either in rescuing people or punishing or mediating. Well: these things you can only carry out by means of laws and decrees, imposing on some the burthen of contributions, requiring some men to take command of ships, some to go on board, others to

[1] This objection is more clearly captious than the former one which fell under Wolf's animadversion. For surely a man who had never offered bail would not have the benefit of the statute of Timocrates but would remain subject to the old law.

perform other needful duties. To enforce these obligations, you impanel juries and pass sentence of imprisonment upon the refractory. Only see how this fine fellow's law mars and ruins it all. It is written, you know, in his statute, that, "if any of the persons who are indebted to the state has been or shall hereafter be condemned to suffer the penalty of imprisonment, it shall be lawful for him, upon putting in bail as security for payment of the money in the ninth presidency, to be released from imprisonment." What supplies then will there be? in what manner will the forces be sent off? How shall we levy our monies, if every debtor gives bail according to the defendant's law, instead of doing his duty? We shall say, I suppose, to the Greeks—" we have a law of Timocrates: wait for the ninth presidency; then we will start." That's the only thing left. But, should you be called upon to arm in your own defence; think ye that the enemy will wait the tricks and subterfuges of the miscreants here? or that the commonwealth, if she passes laws which embarrass her and are contrary to her interests, will be in a condition to do aught that she should do? We may be glad, men of Athens, if, with everything going right, and without any such law as this, we can get the upper hand of our enemies, keep pace with sudden emergencies,[1] meet the occasions of war, and never be behindhand. If it appears that you have proposed a law destroying the means by which our commonwealth has become respected and honoured among all men, do you not deserve to suffer any punishment that can be devised?

Further, men of Athens, he ruins our finances, both sacred and civil. I will show you how. You have a law in force—there is not a better existing—that those who have in their hands any money belonging to the temples or the treasury shall pay it into the council-chamber, or, if not, the council shall get it from them under the statutes which relate to the farmers of taxes. By means of this law the public revenue is administered. Through this the money which is spent upon the assemblies, the sacrifices, the council, the cavalry, and other things, is provided beforehand. For, as the pro-

[1] Ταῖς ὀξύτησι is differently understood by Auger: "de pouvoir, par la promptitude de nos préparatifs, arriver toujours à temps et ne pas manquer les occasions."

ceeds of the taxes are not sufficient for the administration, the extras (as we call them) are paid through the fear of this law. What then can prevent the whole government being overturned, when the income of the taxes is not sufficient for the administration, but there is a large deficit, which cannot be made up till towards the close of the year, and the council and the courts are not authorized to send to prison those who make default in the extras, but they put in bail till the ninth presidency? What shall we do during the eight presidencies? Tell us, Timocrates. Shall we cease to meet and deliberate in case of need? Then shall we still be living under a free government? Shall the courts civil and criminal not sit? And what security will there be for people who suffer wrong? Shall the council not attend to transact their constitutional business? And what remains for us but dissolution of the government? But perhaps we are to do these things without pay. Would it not be monstrous that, through a law which you have been paid to propose, the assembly and the council and the courts should be unpaid? Surely, Timocrates, you ought to have inserted the clause which you did with respect to the farmers of taxes and their sureties, that the state dues should be recovered according to the existing laws, and, if in any other law or decree it is provided that the debts of any persons may be recovered in the same manner as those of the farmers of taxes, that the debts of such persons also should be recovered according to the existing laws. Now however, carefully avoiding the laws of the tax-farmers, because the decree of Euctemon has ordered that we may levy upon judgment-debtors according to those laws, for this reason he did not insert the clause which I refer to. And in such way, by abolishing the existing punishment of defaulters to the treasury, and not substituting another, he destroys everything, the popular assembly, the cavalry, the council, our sacred and our civil revenue: in return for which, if you are wise, men of Athens, you will inflict upon him such penalty as he deserves, and make him an example to others not to propose similar statutes.

Not only does he disable the courts to enforce their penal sentences; he goes further; he gives impunity to public offenders, he ruins our military enterprises, he overturns our financial system, he has by his law come to the rescue of

malefactors, persons who strike their fathers and desert the army; for he abolishes the punishments which by the laws now in force are imposed. The laws enacted by Solon, a legislator nothing like the defendant, declare that, if a man be convicted of theft and sentence of death be not passed, a cumulative penalty of imprisonment shall be imposed on him, and, if any one, having been convicted of ill-treating his parents, enter the market-place, he shall be imprisoned, and if a man has been fined for desertion, and assumes any of the privileges enjoyed by ordinary citizens, he also shall be imprisoned. Timocrates creates an impunity for all such persons; for by the putting in of bail he takes away imprisonment. It appears to me therefore—it may seem somewhat coarse, what I am about to say, yet I am resolved to speak it out—he ought for this very reason to be sentenced to death, that he may pass his law for the wicked in Hades, and allow us who live upon earth to enjoy these righteous and holy laws.

Read these statutes.

The laws concerning theft:
The laws concerning ill-treatment of parents:
The laws concerning desertion:

"If a man has recovered the article which he has lost, the thief shall be condemned to pay the double value; if not, to pay tenfold, besides the cumulative penalty; and he shall be kept in the stocks five days and as many nights, if the Heliastic tribunal shall have imposed such sentence. And any person who likes may propose the additional penalty, when the question of a penal sentence is before the court. And if any one is taken off in custody after conviction for ill-treatment of parents, or for desertion, or for entering where he has no business to enter after notice of exclusion from legal privileges, the Eleven shall put him in prison and shall bring him before the Heliastic tribunal; and any one that pleases, to whom such right belongs, may prosecute; and if the party accused be convicted, the Heliastic tribunal shall determine what penalty, corporal or pecuniary, he shall suffer; and if he be sentenced to a pecuniary penalty, he shall be imprisoned until he has paid."

Solon and Timocrates resemble each other as legislators,

don't they, men of Athens? The one improves both the living and the unborn. The other shows to people who have done evil a way to escape punishment, procures a license for knavery as well for the unborn as for the living, gives indemnity and security to the bad of every age. What punishment then can meet your case? what sentence can be severe enough, when—I pass by other matters—you destroy the protectors of old age, who compel children to maintain their parents while they are alive, and secure to them the customary honours after death? How can one help regarding you as the vilest of mankind, when, you abominable fellow, it is shown that you set more value upon thieves and rogues and deserters than upon your country, and on this account propose laws to our prejudice?

I will now reckon up how I have performed what in the beginning of my speech I promised. I said that I would prove him to be in every way amenable to the indictment; first, as legislating in a manner forbidden by the laws; secondly, as having framed enactments repugnant to the existing laws; and thirdly, for framing such as are injurious to the state. Well. You heard the laws, and what they require a man proposing a new law to do; and again, I showed you that the defendant did not comply with any of their requisitions. Further, you heard the statutes, to which the defendant's is shown to be repugnant; and you know that he has passed this before repealing them. That his statute is not a desirable one, you have undoubtedly heard; for I have just concluded that part of the argument. In every way therefore it is plain that he has done wrong, in everything has he been reckless and unscrupulous. Indeed it seems to me that, had there been anything else prohibited by the existing laws, besides what I have mentioned, he would have done that likewise.

That he framed this statute with evil design, that he committed this offence deliberately and not by error of judgment, is evident in many ways, and especially from his law being of the same character from the beginning to the end; for not even against his will did he propose anything good or likely to benefit you. Can it be otherwise than proper then to detest and punish a man, who cared not for the wrongs of the people, but proposed laws in favour of men who had

done the wrong and intend to do it again? I am astonished at his impudence, men of the jury, on this account; that, when he himself held office with Androtion, he never felt this compassion for the many, who were exhausted in paying taxes out of their property, but when Androtion had to pay the money which he had long ago filched from the state, as well the sacred as the public money, then he proposed his law to deprive you both of the public and the sacred fund, the double in the one case, the decuple in the other. And thus has a man behaved himself to the mass of the people, who will presently say that he proposed this law on the people's behalf. It seems to me, there is no punishment too severe for one, who considers that, if an overseer of the market or an overseer of the streets or a district judge[1] has been convicted of peculation at his audit—a man in humble circumstances, unacquainted with public business, of little experience, who has served an office to which he was chosen by lot—he ought to pay tenfold; and who proposes no law for the relief of such persons; but if wealthy men, chosen as ambassadors by the popular assembly, have embezzled large sums of money, both public and sacred, and kept them for a long time in their hands, studiously contrives that they shall escape every punishment which either laws or decrees ordain. Timocrates himself will hardly say that he is as good a legislator as Solon. Now Solon, men of the jury, did not contrive that people of this kind should play their tricks with impunity, but that they should either abstain from

[1] The Ἀγορανόμοι, Overseers of the Market, were ten in number, one being chosen by lot from each tribe. Five served in the city, five in the Piræus. Their duties were to keep the market-place in order and repair, to attend it during the hours of business, to inspect the goods offered for sale (except corn, which was under the care of the Σιτοφύλακες), to see that the regulations in regard to prices, weights and measures, &c. were duly observed, and to prevent cheating and unfair dealing. For any breach of the market laws, they had power to inflict punishment instanter, by fining a citizen, or by stripes in the case of a foreigner or a slave. They carried a whip as a badge of their authority. They received the toll (ξενικὸν τέλος) which foreigners had to pay for the use of the market.

The Ἀστυνόμοι, Overseers of the Streets, were also ten in number, and elected in the same manner as the Ἀγορανόμοι. Their business was to keep the streets clean and safe, and to prevent disorder and disturbance.

As to the District Judges, see Appendix I. to this volume.

doing wrong or suffer condign punishment; and he introduced a law, that, if a man stole anything in the daytime of greater value than fifty drachms, he might be taken off to the Eleven, and, if he stole anything by night, it should be lawful to kill or wound him in pursuit or take him off to the Eleven, at the option of the party. And a person convicted of crimes for which arrest was allowed could not give bail and refund his thefts, but was to suffer capital punishment. And if a man filched a cloak or an oil-cruet or the most trifling article from the Lyceum or the Academy or Cynosarges, or any of the utensils from the gymnasia or the ports, above the value of ten drachms, he enacted that such person should be punished with death; and that, if any one were convicted of theft in a private action, he might pay double the assessed value, but it should be lawful for the court, in addition to the pecuniary damages, to inflict on the thief the penalty of imprisonment for five days and as many nights, so that all men might see him in custody. (You heard those laws just now.) For Solon's opinion was, that a person guilty of such turpitude ought not to be let off upon payment simply of what he had stolen; because thieves would be very numerous, if they could keep their plunder when not found out, and being found out had only to refund it; and therefore he thought that a thief should pay double the value of the thing stolen, and, in addition to that penalty, should be imprisoned and live in disgrace for the rest of his life. Such was not the view of Timocrates however. He contrived that people should pay the simple sum where they ought to pay the double, and that there should be no penalty in addition. And he was not content with doing this injustice in respect to the future, but he even discharged persons who had been already sentenced for their misdeeds. I always imagined that a legislator was to make provision for the future, with respect to the conduct of people and the regulation of affairs and the ordinances of the penal code. This is the way to pass laws applying impartially to all citizens: to frame statutes about past events, is not to legislate, but to save the criminals. Mark how I prove the truth of my statement. If Euctemon had been convicted upon the indictment for an illegal decree, Timocrates would not have proposed this law, nor would the state have required this law, but they would have been con-

tent, after plundering the state, to let everything else alone. Now, as he was acquitted, he thinks that your resolution and the verdict of the court and the rest of the laws ought to be set aside, while his own law and his own authority are established. But, Timocrates, our existing laws, which are in force, give the control of everything to the jurors, and empower them, after hearing the case, to deal more or less rigorously with the offender according to the character (in their opinion) of his offence. For, when the expression occurs—"what penalty, corporal or pecuniary, is to be imposed"—the assessment of it is vested in the jury. You take away corporal punishment, by remitting imprisonment; and in favour of what persons? Committers of theft and sacrilege, strikers of their parents, homicides, deserters and poltroons: all of whom you preserve by your law. Surely a man who, legislating in a democracy, passes laws not for the benefit of religion or the people, but in favour of such persons as I have just mentioned, deserves the extremity of penal rigour. He can't say that such persons ought not to be, and that the laws do not make them, amenable to the severest punishment, or that these men, in whose behalf he has proposed his law, are not guilty of theft and sacrilege—men who have pillaged sacred property, keeping it in their possession instead of refunding it, (the tenths, I mean, of Pallas and the fiftieths of the other Gods,) and who have embezzled the public monies which belonged to the state. This sacrilege herein differs from others, that they never even brought the money into the Acropolis, as they ought to have done. By Olympian Jupiter! I believe, men of the jury, that this overweening insolence did not come upon Androtion by accident, but was a visitation of the Goddess, in order that, as those who mutilated the Victory[1] perished by their own hands, so these men might perish by litigating among themselves, and either pay the money tenfold according to the laws, or be thrown into prison.

A point just occurred to me while I was speaking on these matters, which is really striking and important. You shall hear it The defendant, men of the jury, framed a clause, that the farmers of taxes, if they did not pay their debts,

[1] Those who cut off the extremities, *i.e.* the feet, wings, &c. of the golden statue of Victory in the temple of Pallas in the Acropolis.

should be proceeded against according to the former laws, which condemn both to imprisonment and double payment men who were likely, by having made a bad bargain, to injure the state unintentionally; while he took away imprisonment in favour of persons who commit robbery upon the state and sacrilege against the Goddess. If you mean to say, Timocrates, that the crime of the latter is (in your opinion) less serious than that of the former, you must acknowledge yourself to be a madman; if you believe the latter to be, as they are, the more culpable, and yet release them and not the others, is it not plain that you have sold your services to them for a bribe?

It is worth while mentioning, how much you, men of the jury, surpass the orators in magnanimity. You do not repeal the severe enactments passed against the multitude—against such, for example, as receive pay from both sides, or take part in the assembly, or sit on juries, while they are indebted to the state, or do anything else which the laws prohibit, although you know that whoever did anything of that sort would do it from poverty; nor do you pass laws to give people the means of doing wrong, but, on the contrary, to deprive them of the means; whereas these men bring in bills to extricate from punishment miscreants of the vilest description. Then they sneer at you in their private conversation, as if they themselves were men of worth and honour, when, in fact, their behaviour is that of base and ungrateful servants. Just as servants who have been made free are not grateful for it to their masters, but hate them above all men, because they know of their having been in servitude; so these orators, men of the jury, are not content with having been raised from poverty to wealth by their political career, but they even insult the people, because the people know how each of them used to live in their younger and humbler days.

But, I suppose, it would have been a shocking thing for Androtion or Glaucetes or Melanopus, to be thrown into prison. A fine idea! It would be far more shocking, men of the jury, for the commonwealth, when she is wronged and outraged, not to obtain satisfaction both for the Goddess and herself. As for Androtion, is not imprisonment his paternal heritage? Why, you know yourselves that his father spent many quinquennial periods in prison, and ran away at last

without being discharged. But for the practices of his youth perhaps. Why, for these he deserves a prison quite as much as for his thefts. Or because he entered the market-place when he had no right, and took respectable people from it to prison of his own authority. But it's a terrible thing forsooth, that Melanopus should be in bondage. I won't speak a word against his father, though I might say a good deal about certain thieveries. For all that I have to say, let the father be as excellent a man as Timocrates would make him out. But if Melanopus, notwithstanding he had so good a parent, was himself a rogue and a thief; if he was adjudged to be a traitor and paid a fine of three talents; if the court found him guilty of theft when he had been their colleague, and he had to pay tenfold; if he betrayed his duty on an embassy to Egypt, and defrauded his own brother; ought he not to be imprisoned all the more, for being what he is when he had so good a father? It seems to me that, if Laches was really a good man and a patriot, he would himself have put his son in bondage for being what he is, and involving him in such foul disgrace. Let us pass him by, and look at Glaucetes. Is not he the man who deserted to Decelea, and sallied from thence to overrun and plunder the country? Why, you all know what I say.—Is he not the man who paid to the Spartan governor there the exact tenth of all the plunder that he took from you, your wives and children, and of everything else that he got?—who, after you had elected him your ambassador, abstracted from the Goddess here the tithe of the spoil taken from your enemies?—who, since that, when he was treasurer in the Acropolis, has stolen from it those monuments of victory which our commonwealth took from the barbarians, the silver-footed throne and the scymitar of Mardonius, which was worth three hundred darics? Why, these things are so notorious that everybody knows them. And is he not a brutal fellow in other respects? There is no man so brutal. Then would it be right to spare any of them, and for their sakes to overlook the tenths of the Goddess, or the double which belongs to the state; or should you leave unpunished the man who is endeavouring to save them? And what will prevent all people being rogues, men of the jury, if they get more by it? Nothing that I can see.

Don't then yourselves encourage, but punish them. Don't

let them grumble at being put in prison when they keep your money, but bring them under the laws. Even those who are convicted of being aliens do not grumble at their sojourn in this lodging[1] till after the trial for false testimony, but remain there, and do not expect to go about on giving bail. For the state thought proper to distrust them, and considered that she ought not to be cheated out of punishment by their putting in bail, but that they ought to remain where many citizens have stayed before. People have been imprisoned ere now both for debt and upon judgments, and yet they have submitted. It is perhaps an unpleasant thing to mention any of them by name, yet it is necessary to compare them with these men. I will pass by those before the archonship of Euclides, and the very ancient cases. All these persons however, at the respective times when they lived, notwithstanding their high previous reputation, met with great severity from the people for their subsequent offences; because the state considered, that they ought not to be honest for a time and knaves afterwards, but honest always in regard to the public property; and persons like them were deemed to have been honest in time past not naturally, but by design, with a view to obtain confidence. But after the archonship of Euclides, men of the jury—in the first place, you all remember that Thrasybulus[2] of Colyttus was twice imprisoned, and both times sentenced in the assembly; though he was one of the men from Piræus and from Phyle.[3] Secondly, Philepsius of Lampra. Thirdly; Agyrrhius of Colyttus, a good man, and a friend of the people, who had shown great zeal for your interests; and yet even he considered, that the laws ought to be as operative against himself as against the humble, and he was in this lodging for many years, until he paid the public money which it was found he had in his hands; and Callistratus, though a man of influence, and his

[1] The Prison. "Erat ergo, quod videtur ex hoc loco colligi posse, carcer in foro, ut velut digito demonstrari posset." Reiske. It was called *οἴκημα* by a euphemism, as Photius tells us: *τὸ μὴ δύσφημα λέγειν πᾶσι τοῖς παλαιοῖς φροντὶς ἦν, μάλιστα δὲ τοῖς Ἀθηναίοις· διὸ καὶ τὸ δεσμωτήριον οἴκημα ἐκάλουν, καὶ τὸν δήμιον κοινόν, τὰς δὲ Ἐριννύας σεμνὰς θεάς.* We may compare perhaps the use of the French word *Concierge.*

[2] This was not the great Thrasybulus, the liberator of Athens, who belonged to the township of Stiria, though evidently one of his party.

[3] See Vol. iii. page 8, note.

nephew, did not propose laws in his favour. And Myronides, the son of Archinus, who seized Phyle, and to whom, next to the Gods, the return of the popular party was chiefly owing, and who had performed many other noble acts of statesmanship, and had many times been general. Nevertheless, all these men submitted to the laws. And the treasurers, in whose time the Opisthodomus was burned, both those of Pallas and those of the other deities, were in this lodging until their trial took place. And the persons suspected of misfeasance regarding the corn; and many others, men of the jury, all better people than Androtion. Then was it right that the old established laws should be in operation for those persons—that they should have suffered punishment according to the existing laws—and that a new statute should be passed for the sake of Androtion and Glaucetes and Melanopus, for persons who have been convicted, who have been sentenced by verdict according to the established laws, and found to have had in their hands moneys belonging to the Gods and the state? And will not the commonwealth become ridiculous, if she is seen passing a law to save persons guilty of sacrilege? I should think so. Do not then allow yourselves or the commonwealth to be insulted. Remember, that not very long ago, in the archonship of Evander, you put to death Eudemus of Cydathenæum, who was judged to have proposed an improper law; and you were very near putting to death Philip, the son of Philip the shipowner, and, when he himself asked for a large fine in mitigation of his sentence, you were within a few votes of disfranchising him.[1] Bear this in mind, and show the same spirit now against the defendant; considering also, what injury Timocrates himself would have done you, if he had been your ambassador alone. I believe there is nothing that he would have refrained from. You see his disposition; for the law, which he has dared to propose, shows the character of the man.

I wish to tell you, men of the jury, how they legislate among the Locrians. You will be none the worse for having heard an example, especially one of a commonwealth governed by good laws. There they consider it right to abide by their old established laws, to preserve hereditary institutions, and

[1] Pabst adopts the reading of ἐτιμήσατε, preferred by Schäfer, whose reasoning (in the Apparatus Criticus) does not quite convince me.

not to legislate for the gratification of caprice, or for the escape of crime; and so far do they carry this, that, if any one wishes to enact a new statute, he proposes it with his neck in a noose, and if the statute is judged to be good and useful the proposer goes away alive, but, if not, the noose is drawn and he dies. In fact, they do not venture to pass new laws, but strictly obey the old established ones. It is said, men of the jury, that in a long period of years they had only one new statute passed. It was this: there being a law, that, if any one knocked out the eye of another, he should lose his own, without any pecuniary penalty, a man having an enemy with only one eye threatened to knock it out. The one-eyed man, alarmed at this threat, and thinking that his life would not be worth having after such a misfortune, ventured (they say) to introduce a law, that, whoever knocked out the eye of a one-eyed man, should lose both his own, so that both should suffer the same affliction. And this (they say) is the only law which the Locrians enacted in more than two hundred years. But our orators, men of the jury, are almost every month passing laws for their own advantage; and though they, when in office, take private citizens off to prison, they do not choose the same measure of justice to be applied to themselves. The laws of Solon, which our ancestors passed, and which have so long since undergone probation, they repeal of their own authority; their own laws, proposed by them for the detriment of the commonwealth, you are bound (they think) to adopt. If you don't punish them then, the mass of the people will, before it's very long, become the slaves of these monsters. Be assured, men of the jury, that, if you show a determined resentment, they will not misbehave themselves so grossly; if you do not, you'll have a pretty lot of these rascals who insult you under the pretence of zeal in your service.

That I may speak also of that law, men of the jury, which I hear the defendant means to quote for a precedent, and to say that he has proposed his own in conformity with it—in which there are the words,—"Nor will I put any Athenian in bondage, who offers three sureties of the same class, unless where a man has been convicted of conspiracy to betray the commonwealth or put down the democracy, or where a farmer of taxes or a surety or collector commits default."

I beg you to hear my reply to this. I will say nothing about Androtion taking people to prison and putting them in bonds notwithstanding this law; but I will show you to what persons the law is applicable. Observe then, men of the jury; this law was meant not for persons who have had their trial and sentence, but for the untried, lest by their being imprisoned they should be crippled in their means of defence, or even unprepared for it altogether. Timocrates will try to make out, that a provision meant for the untried was intended for all. I will show you how you may convince yourselves of the truth of my statement. In the first place, men of the jury, it would not have been lawful for you to determine, what penalty, corporal or pecuniary, a man should suffer (for in the expression "corporal penalty" is included imprisonment; therefore you could not have sentenced to imprisonment); and again, with regard to those offenders against whom information or arrest is allowed, there would not have been inserted this clause in the statutes, "And the Eleven shall put in the stocks the party who has been informed against or arrested," had it not been lawful to put in bondage other persons besides those who have conspired to betray the commonwealth or put down the democracy, and besides farmers of the taxes who are defaulters. These facts must be taken as proofs that imprisonment is lawful; were it otherwise, your penal sentences would have been wholly null and void. Besides, men of the jury, this formula, "Nor will I put any Athenian in bondage," is not of itself a law, but is a clause in the oath of the councillors, to prevent the orators in the council from combining together, and moving to imprison any of the citizens. To put it then out of the council's power to inflict imprisonment, Solon inserted this in the oath of the councillors, but not in yours; for he considered that a court of justice should have control over everything, and that whatever punishment it imposed should be undergone by the convicted party. He shall read you for this very purpose the oath of the Heliasts. Read.

THE OATH OF THE HELIASTS.

"I will vote according to the laws and decrees of the Athenian people and council of five hundred, and I will not

vote to establish a tyrant or an oligarchy; and if any one attempt to put down the Athenian democracy, or speak or put any question in opposition thereto,[1] I will not allow it. Nor will I sanction any cancelling of private debts or redistribution of Athenian land or houses; nor will I bring back those in exile or under sentence of death; nor will I expel those who are here resident contrary to the established laws and decrees of the Athenian people and council; nor will I permit any one else to do the like. Nor will I appoint any man to an office,[2] so that he may hold it while accountable for another office, whether that of the nine Archons, or of the Hieromnemon, or any to which the election takes place on this day together with the nine Archons, or that of herald, ambassador, or member of congress.[3] Nor will I permit the same man to hold the same office twice, or the same man to hold two offices in the same year; nor will I accept bribes for performing my Heliastic duty; nor shall any other man or woman accept a bribe on my account, with my knowledge, by any trick or contrivance whatsoever. And I am not less than thirty years of age. And I will hear both the accuser and the defendant alike, and I will decide strictly upon the question of the suit.—And he[4] shall call to witness Jupiter, Neptune, and Ceres; and shall pray that destruction may fall upon himself and his house, if he transgress any part of this oath, and for blessings and prosperity if he observe it."

You don't find here, men of the jury—"Nor will I put any Athenian in bondage;" for the courts of justice decide all

[1] Παρὰ ταῦτα—"Τὰ ψηφίσματα subaudit Matthiæ. Mihi significare videtur τὴν πολιτείαν, *statum popularem*."—Schäfer. And so Pabst—"Wenn irgend ein Athener die Volksherrschaft umstürzen will, oder gegen dieselbe spricht," &c. And Schömann (Att. Proc. p. 129): "Wenn einer die Volksherrschaft antastet, oder dagegen redet," &c.

[2] The judicial tribunals did not elect to any magisterial office, but the persons elected were brought before them for their δοκιμασία, or probation. See Schömann, l. c. and the Archæological Dictionary, title *Docimasia*.

[3] *i. e.* an Athenian member of the congress of allies, held at Athens after the formation of the confederacy of B. C. 377. See the Archæological Dictionary, title *Synedri*.

[4] Following the reading of ἐπομνύναι, preferred by Bekker and Schäfer, who thinks that the clause belongs to a statute prescribing the oath. The whole extract seems to have come down to us in an imperfect state, as the reader can hardly fail to perceive.

questions that are brought to trial, and they are empowered to pass sentence of imprisonment, or any other sentence that they please.

That it is lawful then for you to pass sentence of imprisonment, I show in this way: that to nullify judicial decisions is an act of wickedness and impiety and a subversion of the democracy, I think all men will agree. For our state, men of the jury, is governed by laws and decrees. If then what has been decreed by verdict may be rescinded by a new law, where is the thing to end? Can we call this properly law, or not rather lawlessness? And ought not a legislator of this sort to be visited with the heaviest displeasure? The severest, in my opinion, not merely for having proposed such a law, but because he shows a road to others, both for the abolition of our tribunals, and the restoration of exiles, and everything else that is most dreadful. For if the defendant, who has proposed such a law, is to get off with impunity, what, men of the jury, prevents a second person starting up and subverting by a new law some other main bulwark of the state? Nothing that I can see. I am told that in former times the democracy was put down, by first putting down the indictments for illegal measures and destroying the authority of the tribunals. It may be objected perhaps, that I am talking about subversion of the democracy under different circumstances from what then existed. I reply, men of the jury, that no man ought ever to sow the seed of such things in the commonwealth, although it may not spring up yet awhile, but whoever attempts to say or do anything of the kind should be punished.

That he attempted also to injure you by craft, it is well you should be informed. He saw that all men at all times, politicians as well as private persons, regarded the laws as the source of blessings to the country; he looked then for a means, how he could destroy them without being discovered, or, in case he were found out, avoid the appearance of having done anything shocking or shameful. He devised the plan which he has adopted, of putting down the laws by a law, so that his misdeeds may have the name of salutary measures. For the laws which preserve the commonwealth, and this of the defendant, which has nothing in common with them, equally bear the title of law. He knew that you

would highly approve of the philanthropic name; that the working would turn out very differently, did not trouble him.[1] For, by heavens! would any committee-man or president ever have put to the vote a single clause of this law? None would, I believe. How then did he slip into it? He gave the name of law to his mischievous acts. For they don't injure you in simplicity or by accident, but purposely and deliberately; and not these men only, but many of your politicians, who will come forward by and by and assist Timocrates in his defence, assuredly from no desire to favour him—that is not very likely—but because each thinks the law is for his own advantage. As these men then support one another against you, so ought you to support yourselves. A man was asking him why he had framed these enactments, and urging the perilous nature of the contest which he had undertaken. The speaker, he said, was mad; for Androtion would come to his help, and had got up at his leisure such arguments upon every point, that he was quite sure no harm could come to him from that indictment. I am astonished at the impudence both of Timocrates and Androtion, the one for coming forward, the other for calling him to assist in the defence. For surely it will be a clear proof to you, that he proposed his law for this man's sake, and not the same law for all. However, it is better that you should hear a little about Androtion's political acts, especially those in which the defendant has taken a part, and for which you ought to detest him as much as the other. I shall not mention anything that you have heard, unless indeed there were some present at Euctemon's trial.

And first let us inquire into that upon which he most prides himself—his collection of the moneys, which he levied from you all in conjunction with this worthy person. He accused Euctemon of retaining your taxes in his hands, and undertaking to prove his charge or pay the money out of his own pocket, upon this pretence he got a decree deposing an

[1] Auger: "Il ne songe en conséquence qu'à l'agrément du nom auquel vous êtes sur-tout attachés, et s'embarrasse peu que dans l'usage on voie paroître des effets tout contraires."

Pabst: "Er erkannte, dass Ihr auf die Menschenfreundlichkeit des Namens Gewicht leget, und setzte sich darüber hinweg, dass aus der Erfahrung sich das Gegentheil ergeben würde."

officer elected by lot,[1] and so crept into the collection. At the same time, on the plea of ill health, he proposed the appointment of the defendant, "to help him" (as he said) "in managing the business." He harangued you upon the occasion, saying that you had the choice of three courses, either to break up your sacred vessels, or to have a new property tax, or to levy the arrears from those who had not paid; and, as you naturally preferred to levy the arrears, and as he had won you over by his promises, and had a license under the peculiar circumstances, he did not choose to act in this matter under the existing laws, or (if he thought them insufficient) to pass new ones, but moved illegal and shameful decrees in the assembly, by means of which he made jobs for his private benefit, using the defendant as the instrument of his gains. And with the defendant's assistance he has largely plundered you, having a clause in the decree that the Eleven and the receivers and officers should accompany him. Attended by them, he led the way to your houses. And you, Timocrates, went with him, you alone of all his ten colleagues. Don't understand me to say, that payment ought not to have been required from the defaulters. It ought: but how? As the law prescribes, for the good of the people at large: that accords with the principles of democracy. You have not been so much benefited, O Athenians, by the receipt of the five talents which these men then collected, as you have been injured by the introduction of such practices into the government. If you will only inquire why people would rather live under a democracy than under an oligarchy, you will find the most obvious reason to be this, that everything is milder under a democracy. That these men did things far more shameful and outrageous than any oligarchy in the world, I need not mention: but let me ask—When have the most shameful things been done in our commonwealth? I am sure you will say, in the time of the Thirty. Yet then, we are told, no one was deprived of safety, who could conceal himself at home; but the Thirty are reproached specially for this, that they took people unlawfully to prison from the market-place. These persons went far beyond them in atrocity; for, being statesmen in a popular government, they converted every private house into a prison,

[1] See the speech against Androtion, Vol. iii. page 154.

taking to your houses the Eleven. What think ye of this, men of the jury, that a poor man, or even a rich one who had been at great expense and perhaps for some reason or other was out of cash, should not only be afraid to enter the market-place, but deem it unsafe even to stay at home, and that Androtion should be the cause of this, Androtion, who, on account of his life and conduct, is forbidden to sue for justice on his own behalf, much more to levy property taxes for the state? If he, or you, Timocrates, who aided and abetted these proceedings, were asked, whether the property or the person is answerable for taxes, you would say the property, if you meant to speak truth; for it is from property that we contribute. Why then, O ye basest of mankind, instead of sequestering lands and houses and scheduling them, did ye imprison and insult members of the commonwealth and the poor resident aliens, whom you treated with more insolence than your own servants? If you will only reflect, men of the jury, what is the difference between being a slave and a freeman, you will find this to be the chief distinction, that with slaves the person is responsible for all offences, while with freemen it is the last thing that ought to suffer punishment. These men took a contrary view; they inflicted corporal punishment on people, as if they were bondsmen. And on such unfair and selfish principles did Androtion act towards you, that, while he allowed his father, who was in prison for a public debt, to run away without payment or trial, he thought that any other citizen who could not pay taxes out of his own property ought to be taken by himself to prison and incarcerated. And Timocrates, when he was levying the double, would not have taken bail from one of us common folk, I won't say till the ninth presidency, but for a single day: no; we must either have paid him the debt, or have been instantly imprisoned; and he delivered to the Eleven people who had not been condemned in court. Yet now he has ventured at his own peril to introduce a law, that persons on whom you have passed sentence may go about freely.

However, they will say that both on that and on the present occasion they acted for your good. Will you then admit that such things have been done for your good, and will you quietly endure their acts of audacity and wickedness? You ought, men of Athens, to detest such persons

rather than have mercy on them. He that acts in any way for the commonwealth, and would experience your clemency, should be shown to have the spirit of the commonwealth. What is that? To compassionate the weak, repress the insolence of the strong and powerful; not to treat the multitude with cruelty and flatter those who appear from time to time to possess influence, as you do, Timocrates; and therefore the jury ought rather to shut their ears against you and condemn you to death, than acquit you for the sake of Androtion.

That they have not even made these levies for your benefit, I will pretty quickly show you. If they were asked, who (in their opinion) do the greater injury to the state, those who farm and live frugally, but through their having to maintain children, through domestic expenses and other public burdens, are in arrear with the property tax, or those who plunder and waste the means of people willing to pay the tax and the contributions of your allies, surely with all their impudence they would not be bold enough to say, that men who do not contribute their own money commit greater crime than men who steal that of the public. How comes it then, Timocrates and Androtion, when it is more than thirty years since one of you commenced his political career, and in that period many generals have wronged the republic, and many orators too, who have been tried before your countrymen, and some of whom have suffered death for their crimes, while others withdrew into exile, which was an act of self-condemnation—how comes it that neither of you ever appeared as the accuser of any of them, or ever was seen to express indignation at the wrongs of the state, and yet you have displayed a zeal for our interests upon an occasion where it was necessary to ill-use so many people? Would you like me to tell you the reason, men of Athens? It is because they share in the wrong which is done you by certain persons, while they embezzled a portion of the taxes which were levied; and so insatiable is their avarice, they make a double profit of the commonwealth. For it is not more agreeable to quarrel with a large number of petty offenders than with a small number of great ones, and surely it is not more like a friend of the people to notice the crimes of the many than those of the few. But the reason is what I tell you.

You must therefore take these things into account; you must bear in mind the various offences which are committed, and punish the delinquents when you catch them, not looking to see whether a long time has elapsed since the act, but only whether the parties were guilty. Should you now submit quietly to what roused your indignation before, it will appear that you condemned these men to pay the money because you were angry, not because you were injured. For angry people usually vent their spite on the offender in the heat of the moment; injured persons only inflict punishment when they have got the wrong-doer in their power. It must not then appear from your present leniency, that on the former occasion you disregarded your oaths and gave way to your feelings contrary to justice: no; you should manifest your abhorrence both of Timocrates and Androtion, and refuse even to hear them, after their political conduct.

But perhaps, notwithstanding these political faults, there are other things which they have managed creditably. Nay: their behaviour to you in everything else has been such, that what you have heard are the smallest grounds for detesting them. What would you have me speak of? Their repair of the sacred utensils and their destruction of the crowns? or their infamous manufacture of the plates? Why, for this, if there were no other wrong which they did to the commonwealth, it seems to me they deserve to die three times over: for they are chargeable with sacrilege and impiety and embezzlement and everything that is most shameful. The greater part of what Androtion said to deceive you I shall pass by. Under a pretext that the leaves of the crowns were dropping off, and that they were rotten from age, as if they had been made of violets or roses and not of gold, he persuaded you to melt them down. Being elected to perform that duty, he associated with himself the defendant, the partner of all his tricks. And then—although for the taxes he added a clause that the public officer should be present (an affectation of honesty, when every one that paid them was sure to check the accounts); for the crowns which he broke up he did not apply the same rule, but has himself been orator, goldsmith, treasurer, and checking-clerk. Now, if you require to be trusted in all that you do for the state, you would not have been caught peculating so clearly: but having defined what

is just for the property-tax, namely, that the state should not trust you, but her own servants, when it appears that in another affair, in the alteration of sacred properties, some of which were not consecrated even in our own generation, you did not introduce the same protective clause which you did in the case of the taxes, are not your motives obvious? I should imagine so.

Again, men of Athens, look to futurity, and see what glorious and admirable public inscriptions he destroyed, and what impious and shameful ones he has written in their place. You must all have seen these inscriptions under the rings of the crowns—"The allies crown the people of Athens for valour and justice;" or, "The allies present as the prize of victory to Pallas;" or, naming the particular states, "Such and such a people crown the Athenians, having been saved by the Athenians"—as, for example, there was inscribed somewhere, "The Eubœans having been delivered crown the Athenians"—and again, "Conon, from the sea-fight with the Lacedemonians." Such were the inscriptions upon the crowns. These, which for you were themes of honour and emulation, by the destruction of the crowns have disappeared: and on the plates, which this impure wretch ordered to be made in their stead, is inscribed, "By the care of Androtion." Yes! though for the crime of impudicity the laws forbid him to enter the temples, his name is in the temples engraved upon the plates. Like the former inscriptions—is it not?—and a theme of equal glory for you!

One may see therefore, three of the most disgraceful things have been accomplished by them. The Goddess they have despoiled of her crowns: in the state they have extinguished an emulation fostered by deeds, of which the crowns while they existed were a memorial: the dedicators they have robbed of no small honour, the credit of being grateful for obligations. Yet after doing all this quantity of mischief, they are so hardened and audacious, that they mention these things as creditable acts of administration; and the one imagines that through his friend he shall be spared by you, while the other sits by and does not sink for shame at his performances. And he is not only so shameless in regard to money matters, but so stupid as not to know that crowns are a sign of merit, plates and the like are tokens of wealth,

and every crown, though it be small, has the same glory in it as a large one, whereas, although cups and censers, if exceedingly numerous, gild the possessors with a show of opulence, yet if a man prides himself upon small matters, so far from his obtaining honour on that account, he is thought to be vulgar-minded. This man however has destroyed the possessions of honour, and made those of wealth insignificant and unworthy of you. And he did not even see, that Athenians were never anxious for the acquirement of riches, but for that of renown were more ambitious than for anything in the world. Here is a proof. They once possessed greater wealth than any of the Greeks, but to win renown they expended it all, and, contributing out of their private means, they never shrank from any peril in the pursuit of glory. From which they have acquired for themselves imperishable treasures, partly the remembrance of their achievements, partly the splendour of the sacred edifices raised to commemorate them, yonder gateway, the Parthenon, docks and porticoes, not a pair of little jars, or three or four golden saucers, each weighing a mina, which, when you please, you will frame another decree to melt down. Not by levying tithes upon themselves, not by doing what their enemies would pray for, doubling the taxes, did they raise these sacred ornaments: not by the help of such counsellors as you did they carry on the government: but by overcoming their enemies, doing what every prudent man would wish them to do, uniting the people in harmony, while they expelled from the market-place men that led such lives as you, they have left behind them a fame that will never die. But you, my countrymen, are so far gone in thoughtlessness and folly, that, even with such examples before your eyes, you will not follow them: but Androtion is repairer of your sacred utensils; Androtion, O earth and heaven! And can any impiety, think ye, surpass this? I look upon it, that a man who is to enter the sanctuaries, to touch the baskets and holy water and superintend the service of religion, ought not to be pure for a stated number of days only, but to have been pure all his lifetime from the practices in which this man's life has been passed.

And of these things by and by. As to his intended defence of Timocrates, though I have a good deal more yet to say, I

will be content.[1] That the law is not against your interests and introduced in defiance of all the laws and iniquitous in every respect, I know he will not be able to contend. But he says, I am told, that the money has been paid by Androtion and Glaucetes and Melanopus, and that it would be the hardest thing in the world on himself, if, after these persons, for whose benefit he is charged with having proposed his law, have satisfied the demands of justice, he should nevertheless be convicted. For my part, I think that such an argument is not in any way open to him. For, if you confess that you proposed your law for the benefit of these men, who you say have done what is right, you ought clearly to be convicted on this account, that the existing laws, according to which the jury have sworn to decide, expressly forbid the proposing of any law, unless it be the same for all the citizens. If you assert that your legislation was for the general good, don't talk about the payment of these men; for it has no connexion with the present statute; but show that the statute is useful and proper. That is the purpose for which you say you introduced it, and which I denying have indicted you, and which the jury are called upon to try. I should indeed have no difficulty in showing, that the payment which those men have made is anything but a payment according to law; however, as that is not the question which you have to decide, why should I trouble you with it now?

I expect also that he will not refrain from this argument, that it would be hard on him to suffer for having enacted that no Athenian shall be sent to prison, and that it is specially for the interest of the humble that the laws should be as mild and lenient as possible. Against such an argument it is better you should be prepared by a few observations, and so there will be less chance of your being misled. When he says "that no Athenian shall be sent to prison," don't forget that he is telling a falsehood. It is not this that he has pro-

[1] The critics wish to alter the text of this passage, because the orator has not yet said anything about the expected argument of Androtion. But we must remember that orators often commit these oversights, and sometimes (if the expression may be allowed) commit them intentionally. Nor is it true that the orator has been silent as to the expected argument of Androtion; for he has anticipated a reference by him to the political services of Timocrates, partly in these very matters for which the prosecutor assails him.

posed, but that you shall have no power to enforce your cumulative penalty. Your verdict, given upon oath after argument and trial, he sets aside. Don't then let him select for recital those expressions in the law which sound the most humane; but let him bring the whole law before you as it stands, and allow you to consider its effects. You will find they are what I tell you, not what Timocrates says. With respect to its being the interest of the many, that the laws should be as mild and lenient as possible, you have to consider an important distinction. There are, men of Athens, two classes of things to which the laws of all states have reference: the first, those rules which govern our mutual dealings and contracts, which define our duties in private matters, and generally, our relations to each other in life; the second, those obligations which every one lies under to the commonwealth, if he means to become a statesman, and pretends to watch over his country's welfare. Now it is for the people's interest, that those laws which concern private life should be framed with mildness and humanity; but on the other hand it is desirable for you, that these laws which concern our public duties should be stringent and severe; for thus you the people will suffer the least wrong from your statesmen. When therefore he resorts to this argument, meet him with the reply, that he abates the rigour, not of those laws which are for you, but of these which inspire your statesmen with fear.

It would be a long affair to show that every word of his forthcoming speech will be deception and imposture. The mass of it I will pass by, and mention only one head which you will bear in mind. Among all the arguments which he adduces, see if he can bring anything to convince you, that it is right for a legislator to order the same things to be done in relation to what is past and ended, as in relation to the future: for, shameful and scandalous as all the clauses of the statute are, this is the most scandalous and the most unconstitutional. If neither the defendant nor any one else can establish this proposition, you ought clearly to see and understand that he is imposing on you, and to ask yourselves how it ever entered into his head to legislate in such a way. You did not propose your law for nothing, Timocrates: no! very far from that! You cannot suggest any pretext for introducing such a bill, except your own abominable avarice; for

not one of these men was either a relative or a connexion or an intimate friend of yours. Nor can you allege, that you pitied men who had been cruelly treated, and therefore chose to assist them. In the first place, you never considered it cruel treatment, that they should pay the money of the state so long after it was due, and with such unwillingness and reluctance, after conviction by three tribunals; (it was cruel conduct on their parts, which should excite indignation rather than move to compassion:) and in the next place, there is nothing so remarkably kind and gentle in your disposition, more than in that of other people, that you should take pity on them. It is not in the same spirit, to pity Androtion and Glaucetes and Melanopus, for having to refund what they have embezzled, and never to have pitied one of all these in court, or the other citizens, (to whose houses you went with the Eleven and the Receivers and officers,) but to have removed their doors, and drawn the bedclothes from under them, and taken favourite waiting-maids for a distress: all which you did for a whole year with Androtion. Surely, you execrable man, the treatment of your countrymen has been far more cruel, and you had much more reason to pity them, who through you orators have no respite from payment of taxes. And this is not enough. The double is exacted from them, and that by you and Androtion, who have never contributed to the property tax a single mite. And yet such was this man's arrogance, such his confidence of impunity, that, though he had ten colleagues, he ventured to enter his account alone with Androtion.[1] For Timocrates has no interest, no personal object to serve, when he incurs your hatred, and introduces laws contrary to all the rest, nay, even to a former law of his own, as (by Athene!) I think has not escaped your notice.[2]

What most (in my judgment) deserves your indignation, I will tell you without disguise. It is this, men of Athens; that, although he does these things for money, although he has decidedly taken up the trade of a hireling, he does not apply the money to purposes, for which, if one knew it, one might have excused him. What do I mean? The defendant's father, men of the jury, is indebted to the state;

[1] To enter in the public book his account of the monies which he had collected during his term of office.

[2] "Acerba ironia, quâ Timocratem ridet."—Reiske.

(I do not mention it by way of reproach to him, but from necessity;) and this worthy person allows him to remain so. He, who will inherit the disfranchisement, in case anything happens to his father—and yet, rather than pay the debt, chooses to enjoy, during his father's life, what it would cost him to pay it—what baseness do you think he is not capable of? And when you have no pity on your father; when you think it no hardship on him, that, whilst you are making money and profit from the taxes which you levied, from the decrees which you frame, from the laws which you introduce, he, for want of a small sum, is excluded from civic rights—do you tell us that you feel compassion for any other people? Oh, but he has managed nicely for his sister! Why if he had committed no other crime, he deserves to perish for this; for he has sold her, instead of giving her in marriage. One of your enemies, a Corcyræan, of the party now holding the city, used to lodge at his house when he came here as ambassador, and expressed a desire to have his sister—on what terms, I forbear to mention—so he has given her up for a sum of money, and she is now in Corcyra. A man who, under the pretence of marrying his sister to a foreigner,[1] has in reality sold her—who takes this care of his father in his old age—who is a parasite, a hireling politician and decree-drawer—won't you put him to death, men of Athens, when you have got him in your power? If you don't, it will be thought you like trials and annoyances, and don't wish to rid yourselves of bad people.

That all offenders ought to be punished, you would all agree, if you were asked, I am sure. That this man, who has introduced a law to the prejudice of the multitude, deserves punishment above all others, I will endeavour to show you. A thief or highwayman or other malefactor of that sort, in the first place, injures just the person that encounters him, and would not be able to rob all men or steal the property of all; in the next place, he disgraces his own life and character only. But if a man introduces a law, by which a perfect license and impunity is given to those who are mischievously inclined, such a person injures the whole state and disgraces all; for, when a disgraceful law is in force, it is a reproach to the state which enacted it, and a calamity to

[1] Which was itself illegal. See the article *Exagoges Dike* in the Archæological Dictionary.

all who use it. Here then is a man who attempts to do you mischief and cover you with infamy—won't you punish him when you have caught him? And what will you have to say for yourselves? You may see with what deep designs he has framed the statute, and how adverse such designs are to the existing government, if you reflect that, wherever people embark in revolutionary measures with a view to put down a democracy, they begin with this—they release those who are suffering imprisonment under previous legal sentence for crimes. Then does not the defendant deserve, if possible, to perish three times over—when, standing alone, and being (as I presume) not likely to put down you, but rather himself to die by your sentence, if you do what is right and proper, he nevertheless followed this flagitious example, and chose by means of his law to release those whom the tribunals have sent to prison, framing an impudent clause, that, if any one has been condemned or shall hereafter be condemned to suffer the penalty of imprisonment, he shall be discharged? Why, suppose[1] just now you were to hear a noise close to the court, and then some one told you that the prison had been opened and the prisoners were making their escape: there is not a man, however old or indifferent, who would not run to give what help he could. And if any one came forward and said that it was Timocrates who was setting them at liberty, he would be led off instantly, and put to death without a hearing. Now then, O Athenians, you have the defendant, who has not secretly done this, but by cheating and imposing on you has publicly passed a law, by which the prison is not

[1] Longin, don son traité du sublime, cite cet endroit du discours, au chap. 13, où il parle de l'effet que produisent les images. La supposition de Démosthene devoit faire impression, surtout dans une république, où chacun ayant part au gouvernement, s'interessoit d'une façon particuliere à la chose publique et au bon ordre de la ville."—Auger.

Compare Quintilian, Inst. Orat. Lib. xii. c. 10.

"Mihi falli multum videntur, qui solos esse Atticos credunt tenues et lucidos et significantes, sed quâdam eloquentiæ frugalitate contentos, ac semper manum intra pallium continentes. Nam quis erit hic Atticus?—Quid Æschines,—nonne his latior et audentior et excelsior? Quid denique Demosthenes? Non cunctos illos tenues et circumspectos vi, sublimitate, impetu, cultu, compositione, superavit? non insurgit locis? non figuris gaudet? non translationibus nitet? non oratione fictâ dat carentibus vocem? non illud jusjurandum per cæsos in Marathone ac Salamine propugnatores reipublicæ satis manifeste docet præceptorem ejus Platonem fuisse?"

opened but destroyed, and has included in it the courts of justice also. For what is the use of them, when persons sentenced to imprisonment are released, and, if you sentence any one hereafter, you are none the better for it?

You should look at this also, that many of the Greeks have often passed resolutions to adopt your laws; a circumstance in which you take a pride, very naturally. For a saying in this court that I have heard of I consider to be true, that all wise people regard the laws as the morals of a state. You should be anxious therefore to make them appear as good as possible, and to punish those who corrupt and impair them; for, should they suffer by your neglect, you will be deprived of this honour, and will create an unfavourable opinion of the commonwealth. Again, if Solon and Draco are justly eulogised, though there is no public service that you could attribute to either of them, except that they passed good and useful laws, surely towards those who legislate in a contrary spirit you ought to show displeasure and resentment. Certain I am that Timocrates has introduced this statute in great measure on his own account; for he felt that many of his political acts merited a prison.

I wish to tell you however of another saying, attributed to Solon, when he was prosecuting a man for having passed an improper law. It is reported that, after having gone through his other charges, he said to the jury, that it was the law in almost all countries, to punish a man with death for debasing the coin—he then asked them if they considered that law just and reasonable, and the jurors answering in the affirmative, he declared it to be his opinion that money was a coin invented for the private dealings of individuals, but the laws he regarded as the coin of the state; therefore, if any one debased this, the coin of the state, and introduced a counterfeit, the jurors had much more reason to detest and punish such a person, than one who debased the coin of individuals. And, as a further proof of its being a greater crime to debase the laws than the currency, he added, that many states, by openly using silver alloyed with copper and lead, saved themselves from ruin and suffered no damage by it, whereas no people ever came off well by adopting bad laws and letting their existing laws be corrupted. To this charge, I say, Timocrates now stands amenable, and ought in justice to receive condign punishment from you.

All men indeed who pass bad and disreputable laws are just objects of resentment; but especially men who vitiate that class of laws, upon which it depends whether the commonwealth is mean or great. Which are they? The laws which punish wrong-doers, and those which confer honour upon the virtuous. For if all men were zealous to serve the public, from an ambition to win the attendant honours and rewards; and if all men abstained from vicious conduct, through fear of the pains and penalties which follow; is there aught that prevents our commonwealth from being preeminently great? Does she not possess more ships of war than any Greek state?—more troops of the line—cavalry—revenue—posts—harbours? And what preserves and consolidates all these advantages? The laws: for it is while they govern the commonwealth, that these things are useful to the people. If the state of things were different; if good men had no recompense; if evil-doers had all the impunity which Timocrates has provided; what confusion would naturally result! Be assured that from these possessions which I have enumerated, if they were twice as many as they are now, you would not derive a particle of benefit. Well then; it is shown that the defendant is attempting to injure you in that department of law, which provides for the punishment of criminals.[1]

For all the reasons then which I have mentioned, you are called upon to show your resentment, to punish this man, and make him an example to others. To be lenient to persons like him, or to inflict but a slight penalty on conviction, is to train up and accustom the greatest possible number to do you wrong.

[1] This is the best sense I can make of the text as it stands in Bekker. And it agrees undoubtedly with the argument of the orator. The only question is, whether the words *τούτῳ τῷ νόμῳ* do not rather point to the law of Timocrates, which is the subject of the indictment. Emendations are suggested by some of the commentators, who would insert *οὐκ οἱ ἄκυροι* before *εἰσὶν αἱ τιμωρίαι*.

Pabst translates in accordance with some such amendment: "Timocrates nun hat durch diess sein Gesetz Euch zu schaden versucht, wie sich klar zeigt, sofern nach demselben Die, welche zu freveln wagen, keine Strafe treffen soll."

To the like effect Auger: "Timocrate montre donc son dessein de vous nuire, lorsque par sa loi il exempte de la peine ceux qui veulent vous nuire."

THE ORATION AGAINST ARISTOGITON—I.

THE ARGUMENT.

Aristogiton was an Athenian orator contemporary with Demosthenes, but one of the most opposite character in all respects. His speaking was distinguished by a coarse volubility and vulgar impudence, which, together with certain other qualities and propensities, obtained for him the opprobrious nickname of the Dog. He is said to have belonged to that class of persons at Athens who were called *Sycophantæ*, of whom I have spoken elsewhere (see Vol. iii. p. 344); and certainly no man better deserved the title than he did, if we only believe half what is said of him by Demosthenes and Dinarchus, whose statements pretty well agree with each other, and are confirmed by what we read in Plutarch's Life of Phocion and elsewhere. The father of Aristogiton having died in debt to the state, he, according to the Athenian law, inherited the liability, and, not being able to discharge it, was thrown into prison. From this time he seems to have been hardly ever free from debt, and to have passed more of his time in prison than out of it. When he was at liberty, he owed it more to the mercy than to the justice of the law; yet he did not scruple to violate it, by intruding into the assemblies and law-courts, from which his disfranchisement excluded him. His vocation was, to attack those public men of the day over whom he could get any advantage; to commence actions, or lay informations, against persons whom he caught tripping in the law, sometimes bringing them to trial, but more often extorting money by threats of legal proceedings. Among others whom he prosecuted were Demosthenes and Hyperides, after the battle of Chæronea. Divers anecdotes are related, marking the thorough profligacy of his character. He counterfeited lameness, in order to escape enrolment for military service. He refused to bury his own father. When he was in prison, he committed a theft and an outrage of so gross a kind, that even his fellow-prisoners refused to associate with him. Having been chosen by lot to serve the office of Overseer of the Emporium, he was rejected by the jury on his probation. Finally he was prosecuted by Dinarchus, for having taken a bribe of Harpalus, the Persian envoy, and being thrown into prison, he died there.

The present prosecution was brought against Aristogiton, for exercising his civic franchise before he had discharged certain debts which he

owed to the state. He had been fined five talents upon a conviction for moving an illegal decree. He had also incurred the penalty of a thousand drachms, upon failing to get a fifth part of the votes on an indictment preferred by himself. These two sums not having been paid within the prescribed period, the debt in due course was doubled, and became ten talents two thousand drachms. To secure the payment of this, he mortgaged a piece of land to the state; and shortly afterwards the mortgage was transferred to his brother Eunomus, he agreeing to pay the debt by ten yearly instalments. Eunomus made two payments, amounting to two talents four hundred drachms, leaving eight talents sixteen hundred drachms still due. Aristogiton, regarding himself as no longer indebted to the state, his brother having been accepted as debtor in his place, proceeded to exercise his political rights as usual, speaking in the assembly, appearing as a suitor in the courts, and commencing prosecutions against his fellow-citizens. For this an information was laid against him by Lycurgus, assisted by Demosthenes; and upon the foregoing facts arose a question, whether Eunomus had become the state-debtor in lieu of his brother, or whether he was only a guarantee, or, at most, a joint debtor with him, Aristogiton not being released from liability. There was also another debt, with which Aristogiton was entered as chargeable in the public register, but which he disputed, alleging that a false entry had been made by one Ariston, against whom he had preferred an indictment for the fraud. The prosecutors contended that this had nothing to do with the present inquiry; that, so long as a man's name remained inscribed in the register of debtors, he must be taken for all purposes to be the debtor; if it was wrongfully entered, he had his legal remedy and could procure his name to be struck out, but in the meantime he was subject to the legal disabilities.

Lycurgus, as principal manager of the prosecution, spoke first, and left very little for his colleague to say upon the questions of law and the evidence in the case. Demosthenes therefore, in his address to the jury, confines himself almost entirely to general observations upon the nature of the offence and the character of the defendant; urging, that it was necessary on constitutional grounds, and for the sake of example, to punish infractions of the law; that Aristogiton was a person who deserved no clemency, because his debts were contracted by misconduct, not by misfortune; that his previous life (which was notorious to all) showed what an abandoned profligate he was—a bad son, a treacherous friend, a corrupt politician; in short, in every respect, both public and private, a pest of society, whom it was dangerous and disgraceful to let off.

The exact date of these speeches cannot be determined; but it appears from internal evidence that they are some years later than the battle of Chæronea. Dionysius and many other critics, both ancient and modern, judging from the style of the orations, have expressed doubts whether they are rightly ascribed to Demosthenes. That in the first of them there are many fine passages, with much force both of argument and language, and that it is in all probability a genuine Attic speech of the day, can hardly be denied; but it has been

thought not to be Demosthenic in character, from its containing harsher and bolder metaphors and expressions, and a less elaborate composition, than we are accustomed to in our orator. It has been suggested that Demosthenes may have purposely adopted an unusual style, in imitation of Lycurgus. Reiske attributes the first of the orations to Hyperides, and Schäfer and some others incline to the same opinion. That the second speech, if it has been correctly handed down to us, could hardly have been delivered by Hyperides, appears from a passage in which Hyperides is spoken of in the third person. But the genuineness of the second speech is perhaps more open to suspicion than that of the first; for, in point of merit, it is less worthy of Demosthenes; and Plutarch, in his Life of the orator, mentions only a single speech of his against Aristogiton.

I HAVE been sitting for a long time, men of the jury, and listening, like yourselves, to the speech of Lycurgus for the prosecution; the general tenor of it I admired, but seeing how he over-exerted himself, I have been wondering whether he is ignorant, that the justice of this case derives not its strength from what he has said or what I am about to say, but the result depends on the favour or the disfavour with which profligacy is regarded by each of you. For my own part, I believe that it is necessary to conduct the prosecution and make long speeches, in order to comply with custom, and that the case may be duly laid before you; but that this matter has been decided by each juror in his own mind and according to his own principles long before, and that now, if the majority of you are disposed to protect and to cherish rogues, we shall have rhapsodized to no purpose, but, if you are disposed to abhor them, the defendant will, with heaven's permission, be punished.

Though much has been said, and all of it well, I shall not hesitate to declare to you my own views. It seems to me that the present trial is not in the least like others. Look at it in this way. Juries come to the courts in general, to learn from the accuser and the defendant the question upon which they have to give their verdict, while each of the parties comes to prove that the legal right is strongly on his own side. But how is it with the present trial? You the jurors know better than we the prosecutors, that the defendant speaks in public when he has no right, being a state debtor and registered as such in the Acropolis; so that each of you is in the position of an accuser, knowing the facts, and not requiring to be told them. The accused is here without the shadow of a defence;

he has no arguments upon the question itself, not a character like that of an ordinary man,[1] not a single point in his favour: but he thinks to get off upon grounds, which would have alarmed another man notwithstanding his innocence; for he places his hope of safety in the enormity of his wickedness. This being so, it would hardly be incorrect, methinks, to say, that, while Aristogiton is the defendant, you are upon your probation, and your own character is at stake. For if you manifest your displeasure at these open and grave delinquencies, and if you visit them with punishment, you will seem to have entered court like judges and guardians of the laws, as you are: but should different motives prevail, (motives which no one would confess, but which will appear by the votes,) it will look, I fear, as if you were the training masters of every man in the city that wants to be a rogue. For every rogue is weak by himself; but one that you assist becomes strong: and such assistance is power and profit to him that gets it, but to you that lend it a reproach.

Before I begin to speak of the defendant's private life, I should wish you, men of Athens, to consider seriously for a few minutes, to what depth of disgrace and infamy the commonwealth has been brought by all these monsters, among whom the defendant stands middle, last, and first. I will pass by other matters; but they come up to the assemblies —in which you invite your orators to express their opinions, not give utterance to their profligacy—there they come, ready-furnished with audacity and clamour and false charges and calumny and impudence and everything of the kind— nothing could be more opposite to the purpose of deliberation; nothing, I am sure, could be more disgraceful. And by these foul means they control everything in the state which is respectable—the laws, the committee of council, the questions of the day,[2] and public decency. If you like such doings— if the conduct of these men has your approval—it is all regular, and we must let things take their course. But if

[1] Βίον ἀνθρώπινον. Reiske—"civilem—honesto viro dignam vitam." Pabst—"sein Leben als rechtlicher Mann." Auger—"une conduite sage et réglée."

[2] Which were set forth by the Prytanes on a tablet, and fixed on the statues of the Heroes, generally four days before the assembly. See Vol. ii. Appendix V. p. 34.) Schömann de Comit. 58.

even at this late period you desire to correct the abuses, to reform a vicious and disreputable state of things, which these men introduced long ago and which you have suffered to continue, you must to-day disregard all such practices and pronounce a conscientious verdict, esteeming above all things Eunomia,[1] the lover of right, the preserver of countries and states: you must consider every one of you, that you are under the eyes of inexorable and sacred Justice, who, as we are told by Orpheus, our instructor in the most holy ordinances, sits by the throne of Jupiter, and overlooks all the works of men; under that persuasion you must give your votes, taking every possible care not to act unworthily of her, from whom the duty of you jurors derives its name—you that are chosen from time to time to sit in justice, and on that day are charged upon your oaths by your country, by the constitution, by the laws, to maintain the rights and honour and interests of the commonwealth. Should you not be thus disposed, should you have brought your accustomed easiness with you to the bench, I fear the thing may turn out differently from what is expected, and we who fancy we are accusing Aristogiton shall appear to be your accusers; for, the more clearly we demonstrate his turpitude without making an impression on you, the greater will be the reproach that falls upon you. And upon this subject enough.

I shall certainly, men of Athens, speak the truth to you with all frankness. When I saw you in the assemblies proposing and putting me up for accuser of Aristogiton, it annoyed me, and I declare to you solemnly I did not wish it. For I was quite aware, that a man who undertakes anything of this sort at Athens hurts himself before he has done with it; if not so seriously as to feel it immediately, yet, if he repeats it often and doesn't stop, he'll quickly find it out. However, I deemed it necessary to comply with your wishes. I supposed that Lycurgus himself would state the case upon the information and the laws, as he has done; and I saw that he was summoning the witnesses who speak to this man's baseness. The general points, which are fit to be considered and ought to be weighed by persons deliberating for the state and the laws, I took upon myself to explain; and to this I will now proceed. Give me leave, I entreat you, men of

[1] By this title the orator personifies legality and good order.

Athens, to discuss these matters with you in the way that is natural to me and according to the plan that I have marked out. Indeed I could not do it in any other way.

The whole life of men, O Athenians, whether they inhabit a great city or a small one, is governed by nature and by laws. Of these—nature is a thing irregular, unequal, and peculiar to the individual possessor: laws are regular, common, and the same for all. Nature, if it be depraved, has often vicious desires; therefore you will find people of that sort falling into error. Laws desire what is just and honourable and useful; they seek for this, and, when it is found, it is set forth as a general ordinance, the same and alike for all; and that is law, which all men ought to obey for many reasons, and especially because every law is an invention and gift of the Gods, a resolution of wise men, a corrective of errors intentional and unintentional, a compact of the whole state, according to which all who belong to the state ought to live. That Aristogiton has been convicted upon every charge of the information—that no argument which he could urge to the contrary would be endurable—it is easy to show. All laws, men of Athens, are enacted for two objects, first, to prevent the doing of injustice, secondly, that the punishment of transgressors may make other men better. Both of these grounds of condemnation, as you will see, apply to the defendant. For having transgressed the laws in the beginning, he has incurred the penalties; and, for not acquiescing in them,[1] he is brought here to be punished by you; so that there is no pretext left for acquitting him. It cannot be said either, that the state is not damaged by these things. I will not remind you, that all the fines of the state are lost, if you admit the sophistries of the defendant—that, if any persons owing fines are to be let off, you should let off the most honest and the best, and those who have been amerced for the least serious offences, not the person who is most profligate, who has most often trespassed, who has been most justly condemned, and for the most shocking offences; for what can be more shocking than pettifoggery and unconstitutional decree-moving, for both of which the defendant has

[1] Pabst's version explains the meaning of these words, οὐκ ἐμμένει τούτοις—"weil er durch jene Züchtigungen sich nicht hat zur Besserung bewegen lassen."

been condemned? I need not say that, if you forgave every one else, you ought surely to allow no favour to a person who sets you at defiance; for that is outrageous insolence. These and the like arguments I will pass by. But this I think I shall demonstrate to you clearly, that all order legal and political is confounded and destroyed, as far as it can be, by the defendant. And I shall urge nothing that is new or extraordinary or peculiar, but only what you all know as well as myself.[1]

If any of you will consider what the power is which causes the council to meet, the people to go up to the assembly, the juries to be impanelled, the old magistrates to make way voluntarily for the new, everything in short by which the state is maintained and governed to be done; he will find that this is owing to the laws and the universal obedience which is paid to them: for, if they were abolished, if every man had a license given him to do what he pleases, not only is the constitution gone, but our mode of living would in no way differ from that of wild beasts. For example, what do you think the defendant himself would do if the laws were abolished, he who thus behaves himself while they are in force? Since then it is acknowledged that, next to the Gods,

[1] With this and what follows compare Shakspeare, Troilus and Cressida, Act I Scene 3:—

How could communities,
Degrees in schools and brotherhoods in cities,
Peaceful commerce from dividable shores,
The primogenitive and due of birth,
Prerogative of age, crowns, sceptres, laurels,
But by degree, stand in authentic place?
Take but degree away, untune that string,
And hark, what discord follows! each thing meets
In mere oppugnancy—
Strength should be lord of imbecility,
And the rude son should strike his father dead;
Force should be right, or rather, right and wrong
(Between whose endless jar justice resides)
Should lose their names, and so should justice too.
Then everything includes itself in power,
Power into will, will into appetite;
And appetite, a universal wolf,
So doubly seconded with will and power,
Must make perforce a universal prey,
And last eat up himself.

it is the laws which preserve the commonwealth, you should act, all of you, in the same manner as if you were sitting here to make up a club-subscription.[1] Him that obeys the laws you should praise and honour, as a person contributing his full share to the welfare of his country; him that disobeys them you should punish. For whatever any of us does at the bidding of the laws, is a contribution to the state and to the public; and he that is a defaulter to it robs you, men of Athens, of many noble institutions, many important advantages, yea, does all he can to destroy them. One or two of these, which are the most familiar, I will mention for the sake of example. The Council of Five-hundred, by means of a slight railing, is able to ensure secrecy, and to prevent the intrusion of strangers. The Council of Areopagus, when it sits in the King's porch and shuts itself in with a cord, is quiet and undisturbed, all people retiring out of the way. All the magistrates who are elected by lot from the people, as soon as the officer has said "withdraw," are armed with the power of the laws, which they were commissioned to execute, and no violence is offered by outrageous persons. A thousand instances besides these I could mention. Everything which is honourable and noble—everything by which the commonwealth is adorned and upheld—discretion, modesty, reverence for parents, respect of the young for their elders—all these prevail by the assistance of the laws over what is disgraceful, over impudence, audacity, and temerity. For profligacy is a thing of a bold and reckless and grasping nature; while honesty, on the contrary, is quiet and scrupulous and slow, and easy to be taken advantage of. You therefore who sit as jurors from time to time should give heed to the laws, that you may maintain their efficiency; for by their help good men prevail over bad. If not, everything is loosed, opened, confounded; the state is at the mercy of the most wicked and the most shameless. By heavens! suppose every citizen had the boldness and impudence of Aristogiton, and reasoned with himself as he does, that a man may say or do what he pleases in a democracy without restraint, if he that so acts has no regard for his reputation, and that for no offence whatever will he be put to death immediately—and suppose, under such persuasion, the non-elect

[1] See the Oration against Midias, Vol. iii. p. 99.

pretended to equality with the elect (whether by lot or by show of hands), and claimed to share the same privileges—suppose, in short, that neither young nor old would perform their duties, but that each individual, banishing order and discipline from his life, regarded his own will as law, as magistrate, as all in all—if we were to act in this way, could any government go on? How say ye? Could the laws retain their authority? What violence and outrage would the city be filled with every day! What lawlessness, what licentiousness of language, in place of the present moderation and reserve! And why need I tell you that all order is preserved by the laws and the obedience which is paid to them? You yourselves are the only persons here impanelled, though all the Athenians drew lots just now, and all wished, I am sure, to be drawn for this court. How comes this about? Because the lot fell on you, and then you were again drawn for the court;[1] and this is what the laws prescribe. You then, who have taken your own places here by virtue of the laws—will you let off a person, when you have caught him, who resolves to speak or to act in defiance of the laws? And will none of you show resentment or indignation at the violence offered to the laws by this impudent and abominable man? Why, you monster of impurity! when your right of speech is barred not by doors or railings, which one may push open, but by penalties of such number and magnitude, which are registered in the temple of the Goddess—you dare to burst those barriers and approach a place from which the laws have banished you! Excluded[2] as you are by every principle of our polity, by the decisions of three tribunals, by an entry of

[1] I cannot persuade myself that Taylor and Schäfer (whom Pabst also follows) are right in understanding ἐλάχετε to mean "you drew lots." If the orator had been speaking of one allotment only, why did he not say simply ὅτι ἀπεκληρώθητε? I rather agree with Reiske in supposing that a second drawing is referred to. After the section of five hundred have been drawn in the usual way (see Schömann, *Antiquitates Juris Publici*, p. 265) it is found that a portion only of these are required for the court in question, and therefore there is a new striking of the jury, as we say; this is the ἀποκλήρωσις. Or perhaps ἐλάχετε refers to the original selection of the whole Heliastic body, ἀπεκληρώθητε to the impanelling of the jury.

[2] Literally "excluded by a cord." We might perhaps say "corded off." It has reference to the cord by which the Areopagites fenced themselves in. (Ante, p. 62.)

the Judges, by another of the Collectors, by the indictment for false entry which you yourself prefer[1]—excluded almost by an iron chain—you nevertheless sneak in and tear through these obstacles! inventing excuses, and getting up false charges, you think to overturn the fabric of your country's justice!

That you ought in no way to tolerate such things, I will show you by a plain and striking illustration. Suppose any one now were to get up and contend that our speakers ought to be taken from the youngest men, or from the richest, or from those who have performed the official services, or from any other class which he chose to select, you would put him to death, I am sure, as a person endeavouring to overthrow the democracy. And you would be justified in doing so. Yet none of these proposals would be so shocking as for a man to advise, that the privilege of speaking should be given to any of the classes to which Aristogiton belongs, namely, to wilful violators of law, or to persons who have come out of prison, or to those whose fathers the people have put to death, or those who have been drawn for an office and rejected on their probation, or debtors to the treasury, or persons completely disfranchised, or those who are, and are reputed to be, thoroughly base: all of which categories belong to the defendant, and apply to such as resemble him in character. I consider, men of Athens, that he deserves death for what he is doing now, but much more, or at least as much, for what it is manifest he would do, if he got the means and opportunity from you; which I trust he never will. I can hardly suppose any of you to be ignorant, that the defendant is fit for nothing that is good or honourable or worthy of the state; (never, O ye Immortals, may there be such a dearth of men in the commonwealth, that she should employ Aristogiton upon any honourable service!) no: the things, for which any one would employ this monster, are such as we should implore the Gods to avert. But, if such things should occur, it were better luck for the state

[1] The indictment against Ariston, the very preferring of which was an admission of the fact, that Aristogiton's name was entered as a debtor. See the argument. And for an explanation of the law, see articles *Bouleuseos* and *Pseudengraphes Graphe*, *Atimia*, *Practores*, &c., in the Archæological Dictionary.

that ill-disposed people should be at a loss for an instrument to execute their purposes, than that Aristogiton should be at liberty and ready to help them. For what crime is there, men of Athens, however terrible, however deadly, which he would shrink from—a creature so polluted, so full of hereditary hatred against the people? Who so gladly as he would overturn the commonwealth, if he had the power? which Heaven forbid! See you not that his nature and his politics are not guided by any reason or good feeling, but by desperation? Or rather his political life is wholly desperation: which is a calamity most baneful to the possessor, shocking and offensive to all, and intolerable to the state. For a desperate man has abandoned all care of himself, all hope of rational safety, but is saved, if at all, by some extraordinary and paradoxical means. What wise man then would connect himself or his country's interests with such a pest? Who would not shun it as far as possible, and keep a person infected with it out of his way, for fear at some time he might stumble upon it unintentionally? Those who take counsel for their country, O Athenians, should not look for a person who will communicate to them his desperation, but one who will impart to them understanding and good sense and a fair share of prudence. These are the things which lead men to happiness: despair leads them where the defendant ought to pack himself off to. In considering this question, have regard not to my speech, but to the general customs of mankind. There are in all cities altars and temples of all the Gods, and among them one of Minerva the provident, worshipped as a good and great Goddess; and at Delphi there is a grand and magnificent temple to her[1] immediately as you enter the sanctuary of Apollo; who, being a God and a prophet, on both accounts knows what is best; but there is no temple of despair or impudence. And there are altars too among all people of justice and legality and modesty, the most beautiful and holy being in the very soul and nature of every man, while others are set up for all men publicly to honour; but there are none of shamelessness or

[1] As to the confusion between 'Αθηνὴ Πρόνοια and 'Αθηνὴ Προναία, I refer the reader to the learned note of Taylor in the Apparatus Criticus.

pettifoggery or perjury or ingratitude, all of which qualities belong to the defendant.

I know that he will avoid the proper and regular course of defence, and, keeping clear of that, will resort to railing and abuse, and threaten to prosecute, to bring into court, to give into custody, and the like. However, he'll get nothing by all this with you,[1] if you give your attention as you should do: for has not the futility of it all been proved in case after case[2] repeatedly? Other instances I will pass by: but, Aristogiton, you have tried seven indictments against me, having hired yourself to the party who then acted for Philip; and you accused me twice when I rendered my account at the audit. I pay that respect to Nemesis which it becomes me as a human being, and I am deeply thankful to the Gods and to all of you, O Athenians, who preserved me; but you, Aristogiton, never were known to speak a word of truth, but were always proved to be a pettifogger. If the jury then should neglect to enforce the laws and should let you off to-day, will you convict me now? For what? Only look at it in this way. For two years the defendant has been obtruding himself on the platform, when he has no right to speak, and he does speak notwithstanding. In this time he could see the wretched Phocides and the brazier from Piræus and the leather-dresser and all the rest whom he has accused before you—he could see them wronging the state; yet he did not see me, the orator, with whom he was at war, nor Lycurgus, nor the others of whom he will have something to say presently. Take it either way, he deserves death: whether, having a good criminal charge against us, he let us off and proceeded against private men; or whether, having nothing against us, he will make such statements to deceive and impose upon you. Now if there really is a man in the city of this way of thinking, that he must and will find some one to bring vexatious charges and prosecutions, without caring whether he does it justly or unjustly, he cannot find any one less useful to him than the defendant. Why? Because a person who is to accuse others and bring them all to trial ought himself to be irreproachable, in order that his

[1] ἀδόκιμα. Pabst—"Diess Alles wird euren Beifall nicht haben. Auger—"seront inutiles."

[2] ἐπὶ πάντων. Pabst—"in allen Fällen." Auger—"en toute occasion."

adversaries may not escape through his baseness. But there is no one in the city so full of crimes, and crimes of so serious a character, as the defendant. What is he then, I ask? Oh, some men say, he is the people's dog. What sort of a dog? One that will not bite those whom he alleges to be wolves, but himself eats the sheep, whom he professes to guard. For to which of the orators has he done as much mischief as he has to private persons, about whom he has moved decrees and been convicted for it? What orator has he brought to trial since he resumed his public speaking? None: but he has brought many private persons. They say that dogs who taste mutton ought to be chopped up; therefore the sooner he is chopped up, the better. He is of no use, men of Athens, for any of the things which he says he is; but he has devised an odious and impudent mode of proceeding Railing in the assemblies and making rash attacks upon all, whatever cheats he has there practised on you collectively by such means, for these, when he has left the platform, he gets satisfaction from each of you singly, making vexatious charges, demanding and extorting money—not from the orators—oh dear no!—they know how to bully again—but from private and inexperienced people, as they who have been hit are aware. Perhaps however you will agree that this is so, but say you think him a useful man to the state, and therefore you ought to disregard all these things and save him. Men of Athens, never judge of a thing from talk, when you have had experience of it in fact. The defendant has not approached you for five years, during which he was condemned to silence. Who, I ask, in all this time has regretted him? What business of the state has any one observed to be neglected through his absence, or what done better since his return to the platform? It seems to me that, on the contrary, during the time that he never came near you the state had a respite from the annoyances which he caused to all, but, since he has been haranguing you again, it is besieged, as the defendant never ceases to make factious and turbulent speeches in every assembly.

I shall now touch upon a somewhat hazardous argument, and address myself to those who like him for these things. In what light such persons ought to be regarded, judge for yourselves: I will say no more than this, that they are not

wise in attaching themselves to the defendant. I assume that none of you who are now in court is a person of this sort; it is just and right and proper, men of Athens, that I should think and speak of you thus. Of the rest of our fellow citizens, that my disparaging observations may apply to as few of them as possible, I assume, that the only person of this description is his pupil, or, if you like, his master, Philocrates of Eleusis; not that there are not more; (would indeed that there were no other admirer of Aristogiton!) but what I shrink from casting as a reproach upon you, I ought not publicly to charge the other citizens with; and besides, the argument will have the same effect, addressed to one. What sort of a person he must be who finds Aristogiton to his taste, I shall forbear to inquire very minutely, for fear I should be driven into discussions of an offensive character: but I say this—If Aristogiton is in downright earnest a rascal, a malignant fellow, a pettifogger, that, in short, which he gives himself out for, I concede, I allow, that you, Philocrates, who are a person of that sort, ought to preserve one who resembles you: for, when all other people are doing their duty and observing the laws, no harm, I think, could come to you by it. But if he is a retailer and huckster and barterer of roguery, and sold every action of his life almost by weight and measure, why, foolish man, do you spur him on? Surely a cook can do nothing with a knife that will not cut; and a man, who wants to harass and annoy every one by his own measures, can make no use of a pettifogger who will sell him. That such is the defendant's character, I need not inform you, for you know it already. You remember how he sold the impeachment against Hegemon: you know how he let drop the indictments against Demades. In the late case of the olive-dealer Agathon, after bawling and crying shame! shame! and turning everything upside down in the assemblies, and calling out for the torture, he received something or other, and, though he was present at the man's acquittal, he kept his mouth shut. The impeachment which he held in terror over Democles—what did he do with it? There are plenty of other cases: it would be tiresome for me to mention them all; and I am certain you have memorandums[1] of them, as you were his

[1] Either memoranda of the proceedings in the several causes, as Reiske explains it in his Index, or copies of the arrangements made

jobbing assistant. What man then, good or bad, would save a fellow of this description? and on what account? (for he is the betrayer of those who are like him, and the natural and hereditary enemy of the good :) unless one thinks, in a spirit of husbandry, that the seed and root of a pettifogger and a rogue ought to be preserved for the state: But this, O Athenians, would be dishonourable, yea, by the Gods, I think it would be impious. Your ancestors, I conceive, did not build these courts of justice for you, that you should make them a nursery to propagate persons of this character, but, on the contrary, that you should check and chastise them, and that baseness should not become an object of ambition or desire.

A vicious inclination, I suspect, is a difficult thing to eradicate. For, when Aristogiton is tried for acknowledged crimes, and has not perished long ago, what can one do or say? He has arrived at such a pitch of wickedness, that, even after the information had been laid against him, he never ceased bawling, slandering, and threatening people: the generals, to whose hands you entrusted the most important affairs, because they would not give him money when he asked it, he said he would not choose even to be superintendents of privies; which was no reproach to them, no; (for they might by giving him a small sum of money have escaped the abuse;) but it was an insult to your election, and an exhibition of his own baseness: the magistrates chosen by lot he worried, asked and extorted money from them, and gave them every possible annoyance: and upon this last occasion he endeavoured to throw all of us into squabbles and confusion, by publishing false papers; for, in fact, he was born to do everybody mischief, and his life proves him to be a person of that kind.

Just consider. There are altogether about twenty thousand Athenians. Each of them walks about the market-place, doing (I may venture to say) some kind of business, either public or private. But the defendant does none; he cannot show any respectable or honest employment in which his life is engaged. His mind is not occupied in promoting any political good; he attends not to any trade or husbandry or other business; he is connected with no one by ties of

between Aristogiton and the persons with whom he compounded his charges, or copies of agreements between him and Philocrates.

humanity or social union: but he walks through the market-place like a viper[1] or a scorpion, with his sting uplifted, hastening here and there, and looking out for some one whom he may bring into a scrape, or fasten some calumny or mischief upon, and put in alarm, in order to extort money. He does not frequent any one of the barbers' shops in the city, or the perfumers', or any other such establishment; he is implacable, undomiciled, unsociable,[2] having no feeling of kindness or friendship, nor any other which a right-minded man has. He goes about with those companions with whom painters represent the impious in Hades, namely, with imprecation and malediction and envy and dissension and discord. A man who is likely to find no favour even with the Gods in Hades, but rather to be thrust among the damned on account of the wickedness of his life—will you, instead of punishing him when his crime is detected, send him forth with greater honours than[3] your benefactors? For whom have you ever allowed, when he owed a debt to the treasury, to enjoy civic rights without paying it? No one. Then don't allow the defendant now; but punish and make him an example to others.

It is worth your while, men of Athens, to hear the rest. What you have just heard from Lycurgus is dreadful enough, as dreadful as can be; yet what I have to mention will be found to match with it, and to be quite of a piece. For, besides that he left Eretria and abandoned his father in prison,

[1] Cicero, ad Herennium, Lib. iv. 49, seems to refer to this passage: "Imago est formæ cum formâ cum quâdam similitudine collatio. Hæc sumitur aut laudis aut vituperationis causâ. Laudis causâ, sic: Ibat in prœlium, corpore tauri validissimi, impetu leonis acerrimi similis. Vituperationis; ut in odium aut in invidiam aut in contemptionem adducat. Ut in odium, hôc modo: Iste quotidie per forum medium, tanquam jubatus draco, serpit, dentibus aduncis, aspectu venenato, spiritu rabido, circumspectans huc et illuc, si quem reperiat, cui aliquid mali faucibus afflare, ore attingere, dentibus insecare, linguâ aspergere possit."

[2] Pabst—"Als unversöhnlicher Menschenfeind lebt er unstät, und ohne Umgang."

Taylor cites Aristotle, Polit. I. 2. *ἄνθρωπος φύσει πολιτικὸν ζῶον, καὶ ὁ ἄπολις—ἤτοι φαῦλός ἐστιν, ἢ κρείττων ἢ ἄνθρωπος, ὥσπερ καὶ ὁ ὑφ' Ὁμήρου λοιδορηθείς.* (Il. ix. 63.)

Ἀφρήτωρ, ἀθέμιστος, ἀνέστιος

[3] Reading *ὢν* instead of *ὡς*.

as you have heard from Phædrus, this odious wretch would not bury him when he died, nor pay those who did bury him their expenses, but even commenced an action against them. And besides that he has not kept his hands off his mother, as you lately heard from the witnesses, he sold his sister—not a sister by the same father, but his mother's daughter and his own sister, at all events, whoever her father was, (for that I pass by)—he sold her, I say, to be taken into a foreign country, as is stated by the plaint in the action which was brought against him on that very account by this worthy brother here, who will presently assist in his defence. In addition to these things, which (heaven and earth!) are bad enough, you shall hear another matter. When he broke his prison and ran away, he goes at that time to a certain woman named Zobia, whom it seems he once cohabited with; and she keeps him in concealment during those first days when the Eleven were searching for him and having him cried; after that she gave him eight drachms to pay the expense of his journey, and also a tunic and cloak, and sent him off to Megara. Afterwards, when he was making a stir here and had become a great man, and when this person who had been his benefactress complained to him and reminded him of the service she had done and asked for a requital, he gave her a box on the ear, and dismissed her from his house with a threat: she would not be quiet, but went, as was natural for a woman to do, among her acquaintances, and talked of her grievance; upon which, he took her off with his own hand to the sale-room of the alien's tax,[1] and, if her tax had happened not to have been paid, she would have been sold through this man, who was indebted to her for his safety. To prove the truth of my statements, call me the person who has not received payment for his father's funeral, and the arbitrator in the action which this man here brought against him for the sale of his sister, and produce the plaint. And call me first of all the patron of Zobia, who harboured him, and the commissioners of sales, to whom he took her off. You expressed indignation just now, that he should accuse those who had subscribed to save him. The monster is odious—odious, men of Athens, and unfit to associate with. Read the depositions.

[1] See Vol. iii. Appendix III. p. 251; and my article *Poletæ* in the Archæological Dictionary.

[*Depositions.*]

What penalty then can be sufficient for a man who has committed so many grave offences? what punishment severe enough? Death would in my opinion be too mild.

I will mention one more of his misdeeds in private, and pass by the rest. Before he left the prison, there came in upon forfeit of bail[1] a person from Tanagra, who had a pocket-book in his possession. Aristogiton comes and has some chat with him, and steals the pocket-book. Upon the man's charging him with the theft, and insisting with vehemence that no one else could have stolen it, he was brute enough to try to strike him. The man being fresh and newly come, got the better of Aristogiton, who was dried and shrivelled up[2] from long confinement; so, when it had come to this, he bites off the man's nose. The poor fellow in this calamity gave up searching for the book, and afterwards they find it in a box, of which the defendant had the key. Upon this the men in prison pass a resolution, not to share fire or light, meat or drink, with Aristogiton, and that none of them should either give him anything or take anything from him. To prove my statements, call me the man himself, whose nose this brutal wretch bit off and swallowed.

[*The Deposition.*]

Fine works these achieved by your orator! and a nice thing truly, to hear speech or counsel from the mouth of one who has done such things! Now read this pretty resolution about him.

[*The Resolution.*]

And could you, O Athenians—when people thrown into prison for roguery and profligacy thought the defendant so

[1] *πρὸς κατεγγύην.* Pabst, following Reiske—"wegen einer geleisteten Bürgschaft." And Auger—"qui avoit répondu pour quelqu'un." But Meier, cited by Schäfer, explains it—"quia vadem dare non poterat," "for lack of bail." The sense is good, and suitable to the case of a foreigner; but it seems not so well to agree with the Greek expression.

[2] *τεταριχευμένου,* "shrunk up like salted fish." This is one of the metaphors censured by Taylor as coarse and unlike Demosthenes. The French and German translators have not attempted to keep it up. Auger—"énervé et épuisé." Pabst—"abgemagert."

much more abandoned than themselves, as to exclude him from their society—could you without shame admit him to intercourse with yourselves—him who is by law an outcast from the constitution? What part of his conduct or his life do you approve, that you should do so, or which of all his proceedings does not disgust you? is he not godless? is he not brutal? is he not polluted? is he not a pettifogger?

And yet, notwithstanding all that he is and all that he does, he is eternally shouting in the assemblies, "I am your only well-wisher; all these men are conspirators; you are betrayed; my goodwill is the only thing left you." I shall be glad to examine this mighty and violent affection of his for you, and to see how he gets it and whence it is derived, that, if it is what he represents, you may make use of it and put confidence in it, if otherwise, that you may be on your guard. Do you suppose, because you passed sentence of death upon his father, and sold his mother as a slave after conviction for undutifulness to her patron,[1] that on these accounts he is well disposed to you? By Jupiter and all the Gods, that would be most unnatural! For if he is attached to them and observes the law of nature, which is one and the same both for men and beasts, and whose rule is to love parents, it is plain he must be hostile to a people who have destroyed them, and to the laws and constitution of that people. If he does not resent these things, who, I should like to know, seeing that he has cast off his regard for his parents, believes in that which he now professes for his country? For my part, I consider that a person who neglects his parents is unworthy of trust, and is an enemy not only to men, but to the Gods.[2] But I suppose, because you convicted him upon the information, and twice put him in prison, and his brother

[1] See Vol. iii. Appendix III. p. 251.

[2] He speaks in the spirit of the Athenian law, which severely punished those who neglected their parents. See Vol. iii. Appendix VIII. p. 351. As to the sentiment, compare Shakspeare, King Lear, Act IV. Scene 2:—

I fear your disposition:
That nature which contemns its origin
Cannot be border'd certain in itself;
She that herself will sliver and disbranch
From her material sap perforce must wither,
And come to deadly use.

as well as him, he is on these accounts well-disposed to you. Why, that also would be unnatural. Or perhaps, because you deprived him on his probation of the office to which he was chosen by lot! Or because you condemned him for moving an illegal decree! Or because you imposed on him a penalty of five talents! Or because you point at him with your fingers to designate him as the vilest of mankind! Or because, while the present laws and constitution subsist, it is impossible for him to be freed from all this disgrace! On what account then is the defendant well-disposed to you? Because (to use his own words) he is impudent. And from what does an impudent man derive his name, but from this, that he dares, for want of shame, to assert that which is untrue and which never can be true; as the defendant does?

There are some points as to the information, which I thought Lycurgus omitted, upon which I ought to address a few words to you. I hold that you ought to try the defendant and the rights of this case in the same manner as if you were considering a question of private debt. Suppose now that one man charged another with owing him a sum of money, and the other denied it; if the covenant upon which he borrowed the money were shown to be in existence,[1] and the tablets which were set up to be standing,[2] you would hold the party denying the debt to be an impudent person; if they were shown to be removed or destroyed, you would think the complainant an impudent person: it is natural you should. Well: of Aristogiton's debt to the state there are these evidences: his covenant, the laws, according to which all debtors are registered; his tablet, the board which lies in the temple of the Goddess. If indeed these are removed, and the debt is cancelled, we are talking nonsense, or rather telling falsehoods; but if they still exist, and will exist and abide until he has paid the debt, then the defendant is not speaking a word of truth, but is a wrong-doer and a criminal for endeavouring to destroy a just claim of the public. For

[1] *κείμεναι*, "remaining where they were deposited"—which was commonly with some third party. See my article *Syngraphe* in the Archæological Dictionary.

[2] *ὅροι* were tablets or pillars which showed that the land where they were set up was mortgaged. For a more full explanation, the reader is referred to the speeches against Onetor in this volume.

we are not now trying or arguing, whether he owes all that he once owed, but whether he owes anything at all. Or it would be hard indeed upon those who are entered for a drachm only, if, because they have done little or no wrong, the fact of their being debtors must operate to their prejudice; while a person who has done grievous wrong may have his franchise on making one or two payments. Besides, the debts which are entered against Aristogiton, and for which the information is laid, are three in number. Two of them he has returned as being due;[1] the other he has not returned, but he prosecutes Ariston of Alopece for a fraudulent entry. "Yes," says he; "for he has entered my name unjustly." For this then, as it seems, you must obtain satisfaction. But then it is necessary first to render satisfaction, and to submit to the penalty which has been imposed on you; or for what shall you obtain satisfaction? For, if it is lawful for you to act in every respect like other men, what wrong have you suffered? I beg of you, men of Athens, to consider this. Should he convict Ariston of fraudulent entry, what will be the consequence? His name will be expunged, I suppose, and Ariston's will be entered instead; that is what the laws prescribe. Very good. I ask then, will this man whose name is expunged be indebted to the treasury from that day, and the other who is entered have his franchise? According to what the defendant now contends for, this is the result; for if, when his name is entered, he is not a debtor, when it is expunged, he will of course be a debtor. But this is not so; it can't be: the truth is that, when his name is expunged, then he will not be a debtor; he is therefore a debtor now. But

[1] Because the very proposal to give his land in mortgage was an acknowledgment of the debt; and there was doubtless a record of this in the public register. Pabst, following Reiske, translates, "Zwei hat er bezahlt und ausstreichen lassen." I cannot see that this agrees either with the words or the argument of the orator. Auger, who gives the same translation, confesses candidly enough that he does not understand the passage: "Ce que veut dire dans le texte ἐν ἀπογραφῇ πεποίηται, je l'ignore absolument."

The argument runs thus:—"There are three debts. I need not trouble myself about two of them, for they are not in question; Aristogiton having admitted their existence when he mortgaged his land for them. The third alone he denies, accusing Ariston of having falsely entered it." Then he proceeds to show the fallacy of Aristogiton's argument with respect to it.

what say you to this? If Ariston be acquitted, from whom will the state get satisfaction for what the defendant does now without any right? And those persons whom he appears against in the court, going about and proposing penalties of death and imprisonment, how are they to recover their lives, or indemnity for their sufferings? For this man, whom the laws allow not to share even common and ordinary rights, brings irretrievable misfortune upon others in a way that is neither just nor constitutional, nor for your advantage. For my own part, when I see these things, I wonder what your notion is of things being upside down. Is it the earth being up there, and the stars down here? That can never take place, and I trust it never will. But when those, who have no liberty by the laws, have liberty by your wills; when profligacy is honoured and virtue discarded; when what is just and useful is overpowered by envy; then we should consider that everything has been turned upside down.

I have seen persons on their trial before now, who, being convicted by the facts, and having no means of proving their innocence, appealed, as a last resort, either to their general respectability and good behaviour, or to the deeds and services of their ancestors, or to something else of that sort, by which they moved the jury to compassion and clemency. Upon none of those topics has the defendant any footing that I can see: to him such ground opens nothing but precipices, whirlpools, abysses. For of what really can he speak? Of something that his father has done, perhaps. Why, you passed sentence of death upon him in these courts here, doubtless because he was a rogue and deserved to die. I suppose however, if this about his father is an awkward matter, he will appeal to his own life, as being so decent and respectable. What life? where spent? That which you have all witnessed is not one of this character. Oh but, my good sir, he will fall back upon the public services. When performed, and where?, Those of his father? There are none. His own? Presentments, arrests, informations you will find, but no services. But perhaps, even without these, a host of relations, worthy and good men, will come forward to beg him off. Why, he has none, and never had any; how could he, when he is not even free born? I beg pardon; he has a brother, this person who is here, and who commenced that pretty

action against him. Other things about him there is no need to mention. Brother he is to the defendant both on the father's and the mother's side, and, to his further misfortune, a twin brother. This person—I pass by other matters—but the poisons and the enchantments, for which you put to death that detestable poisoning woman, the Lemnian Theodoris,[1] and her whole race with her; these he got from her servant, who gave the information against her, and by whom this rascal has had children; and now he practises juggling tricks and impostures, and professes to cure epileptic people, being himself an epilept with every kind of baseness. This person, I say, will petition for him; this poisoner, this pest, whom any one would regard as an object of evil omen rather than wish to address; a man who has pronounced himself worthy of death[2] by bringing such an action.

What then remains, O Athenians? Those aids, I suppose, which are common to all persons on their trial, derived from the feelings of you, their countrymen; for the accused never finds them for himself, but each juror brings them with him from home: I mean mercy, compassion, humanity. But it is not right, before God or man, to give this odious creature the benefit of such feelings. Why is it not? Because, whatever law a man has in his own nature for his fellow-men, the same ought to be applied to him by each of them. What law do you think Aristogiton has for all? what wish does he cherish? Think ye he wishes to see them prosperous, and living in happiness and honour? And what will he do to live? For the misfortunes of others support him. He therefore wishes all people to be involved in litigation and trials and foul charges. This is his husbandry, this his trade. Pray tell me, Athenians, what sort of a person deserves to be called an out-and-out rogue, an accursed wretch, a common enemy, a foe to mankind; for whom one would wish the earth

[1] It was Demosthenes himself who prosecuted her, as we learn from Plutarch in his life of the orator. He calls her Theoris, and says she was charged (among other things) with teaching slaves to cheat their masters.

[2] Pabst adopts Schäfer's reading, αὑτῷ. But he is wrong in translating τετίμηκεν "in Antrag gebracht hat;" for that would require the middle voice. Whichever we read, αὑτῷ or αὐτῷ, the assertion of the orator is not to be understood literally, but only to signify that the bringing of the action was a virtual condemnation.

to yield no fruit, nor afford ground for burial? Is it not such a person as this? In my opinion, certainly. What compassion, what mercy has been shown by the defendant to those whom he falsely accused; for all of whom he proposed the penalty of death in these courts, and that too, before the division for the first verdict? And those persons, against whom this miscreant was so bitter and savage, the jurors allotted to try them, O Athenians, in the discharge of their duty preserved; and, while they acquitted the objects of his persecution, they did not give him a fifth part of the votes. But his bitterness and bloodthirstiness and cruelty were found at their post: he saw children and mothers of the accused, in some cases aged women, standing before the tribunal, and had no pity on them. And is there mercy for you, Aristogiton? On what account, and from whom? Or do your children deserve compassion? Far from it. You have forfeited their title to compassion, or rather you have destroyed it wholly. Do not then approach the harbours which you have yourself blocked up and filled with stakes;[1] for it is not just.

If you were to hear the slanders which he uttered against you as he walked round the market-place, you would detest him still more; and justly. He says that many persons are indebted to the treasury, and that they are all in the same predicament with himself. I grant that the unfortunate are many, even though they are but two; for they are decidedly more than they should be, and none of the other citizens ought to be state debtors. But most assuredly I don't think they are in the same predicament with the defendant, nor anything like it, but quite the contrary. Just consider—and don't imagine, O Athenians, that I am addressing you as persons indebted to the treasury; for it is not the fact, and I trust never will be, and I don't believe it. But should any one of you happen to have a friend or acquaintance among that class, I will show you that on his account you ought to detest the defendant. In the first place, because honest men, who have become sureties, and done acts of kindness, and contracted private debts, to which no criminality is attached, and who have fallen into misfortune—such men he puts in the same rank of infamy with himself, which is neither right nor proper. For it is not the same thing, Aristogiton, nor

[1] As to πρόβολοι, see the Oration on the Chersonese, Vol. i. p. 111.

anything like it, for you, who moved that three citizens should be put to death without trial, to be indicted and convicted for an illegal motion, and, when sentence of death ought to have followed, to be let off with a fine, and for one who has become security for a friend to be unable to pay an unexpected penalty. It is not the same thing; no! In the next place, Aristogiton, as far as it depends upon himself, breaks up and destroys that general good feeling which you have naturally for one another; as you may see from what I am about to say. You, men of Athens, exercising, as I have said, your natural kind feelings towards each other, live together in the commonwealth much in the same way that relations dwell together in their private houses. How then do they manage? Where there is a father with grown-up sons, and perhaps their children also, there must necessarily be many different inclinations; for youth and age neither talk nor act in the same manner. However, if the young are discreet, they contrive in all that they do, if possible, to escape observation, or, if they cannot, at all events to have the appearance of desiring it: and the elder people again, if they chance to observe any expenditure, or any drinking or pleasuring that passes the bounds of moderation, see it without appearing to have seen. And by such means everything is done which human nature prompts, and is done well. Just in the same manner you, O Athenians, live in the state in a spirit of relationship and humanity; the bulk of you so looking at the acts of unfortunate men, as (to use the words of the proverb) seeing not to see and hearing not to hear, while they manage in all their proceedings to display a cautious reserve and sense of shame. And by such means that universal concord, which is the origin of all blessings, is established and abides in the commonwealth. This state of things, so happily settled by your natures and habits, Aristogiton disturbs, destroys, and casts to the wind; and, what every other man who has been unfortunate does without noise, he performs almost with bells round his neck. Neither president, nor crier, nor chairman, nor assistant tribe,[1] can control him. And now, when any of you, annoyed at the defendant's indecent conduct, says—"This fellow to act in such a way,

[1] Those who sat on the steps of the platform to keep order. See Vol. ii. Appendix V. p. 341.

when he is a debtor to the treasury too!" "Well! isn't such and such a one a debtor?"—this is the answer you get, every man naming his private enemy: and thus Aristogiton's profligacy draws forth these reproaches, which are cast upon persons who do not resemble him.

It remains then, O Athenians, for those who wish to get rid of this man, now that they have a crime clearly proved according to the laws, to pass sentence of death upon him (that is the best course), or at all events to impose such a pecuniary fine as he will not be able to pay: there is no other way of getting quit of him, you may be assured. Among the rest of mankind, O Athenians, you may observe, that the good and honest, by their own natural impulse, do what is right; those less estimable, who yet fall not within the rank of the very bad, avoid committing faults through fear of you and through their sensibility to reproach and disgrace; the worst sort, the most wicked wretches (to use a common expression), are brought to their senses by misfortune. But this Aristogiton has so far surpassed all mankind in wickedness, that even suffering has not been a warning to him; he has again been caught in the same acts of injustice and encroachment. And he deserves your wrath far more now than he did before, because then he only thought proper to move illegal decrees, whereas now he does everything—accuses, speaks in public, utters foul and abusive language, proposes sentences of death, brings impeachments, slanders citizens possessed of their franchise, he himself being a debtor to the treasury; nothing can be more atrocious than this. To admonish him would be madness: he that never was frightened nor put down by that tumult with which your whole assembly admonish troublesome persons—he'd be likely to mind the warning of a single individual. The defendant's case is incurable, incurable, men of Athens. As physicians therefore, when they see a cancer or an ulcer or anything of the sort which is incurable, burn it out, or cut it wholly away, so ought you to exterminate this monster, to cast him out of the commonwealth, to destroy him, not waiting till you suffer something which I pray may never befall you either publicly or privately, but taking timely precaution against it. For just consider. None of you, I dare say, was ever bitten by a viper or a tarantula, and I hope you never will be; but

yet, whenever you see creatures of that kind, you kill them directly. In like manner then, O Athenians, when you see a pettifogger, or a man bitter and viper-like in his nature, don't wait till he bites you, but whoever lights upon him, give him his deserts.

Lycurgus called Pallas and the mother of the Gods to witness, and he did well. I invoke your ancestors and their virtues, whose memory not even time has effaced; and no wonder: for they governed the state, not by lending themselves to assist knaves and pettifoggers, not by venting spite upon each other within the walls, but by honouring both orators and private citizens who were virtuous and good, while the wicked and the audacious they detested and punished: the consequence of which was, that all were competitors in honourable deeds.

One thing further, and I have done. You will go forth presently from the court, and all who have stood around, foreigners as well as citizens, will take a view of you, and will look at every man who passes, one by one, and know those who have given votes of acquittal by their countenances. What will you say then, men of Athens, if you go forth as persons who have abandoned the laws? With what faces, with what eyes will you meet the gaze of each beholder? How can you go to the temple of Cybele,[1] if you have any occasion? Could you individually and separately have recourse to the laws, as being in force, if you all collectively quit the court without having affirmed them? Surely not. How on the first day of the month will you ascend to the Acropolis, and implore the Gods to grant prosperity to the state and to each of yourselves, when, Aristogiton and his worthy father being there,[2] you have given a judgment contrary to your oaths and to the facts there registered? Or what will you say, Athenians, what will you say, should any one guess the acquitting jurors and put the question to you? What will you answer? That you like this man? And who will venture to say so? Where is the person who would inherit his baseness, attended with execration and dishonour?

[1] In this were archives of the Athenian laws, to which every citizen had access. See Νόμος, Arch. Dict.

[2] *I. e.* their names being there entered as debtors. For, though the father was dead, the record of his debt probably remained.

Will not each of you rather say that he did not acquit? Then you'll execrate those that did, each thus giving proof that he was not one of them. And wherefore resort to this, when good words might be on your lips, when all might implore blessings for all, you for yourselves, and the rest of the Athenians for you, and I may add the foreigners also and their wives and children? For the defendant's mischievous activity has reached, verily it has reached all; and all would rejoice to be delivered from his wickedness, and to see punishment inflicted upon him.

THE ORATION AGAINST ARISTOGITON—II.

That Aristogiton the defendant is a debtor to the treasury, and that he is not possessed of his franchise, and that the laws expressly prohibit such persons from speaking in public, has been clearly shown, men of the jury. It is your duty to repress and restrain all people who break the laws, but most especially those who hold magisterial offices and take a part in political affairs. For through them the republic cannot help being either injured, if they are vicious, or, on the other hand, greatly benefited if they are virtuous and choose to observe the laws. If you once allow those who undertake any public duty to violate the laws and set at nought the rules of justice, it is a matter of course that all who belong to the state should suffer by it. For as mistakes occurring on board ship in a voyage, if committed by any of the common sailors, cause but slight damage, but, if the pilot commits a fault, the mischief which he does extends to all the passengers; in like manner the errors of private men do injury not to the multitude, but to themselves, whereas those of magistrates and statesmen reach the whole people and therefore Solon ordained that punishments for private men should be slow, but speedy for official personages and political leaders; for he thought that from the former we might get satisfaction in the course of time, but from the latter we could not wait for it: and in fact there would be nobody left to punish, if the constitution was overthrown.

No one is impudent or arrogant enough to dispute these principles, except this wicked wretch Aristogiton. We shall find, they are submitted to by all our magistrates and statesmen, when you have once passed any sentence against them. For example, when any of the men in office are deposed, they immediately cease to exercise their functions and are deprived of their crowns; and again, such of the Judges as are not promoted to the Areopagus never think of forcing themselves into the place, but acquiesce patiently in your decision. And it is reasonable they should do so: for as, while they are in office, they consider that private men are bound to obey them, so, when they have returned themselves to a private station, it is right they should conform to the laws which govern the state. And if you will look back to the earliest times, you will see that all our statesmen in the same way submitted to your ordinances. Aristides, they say, after being removed by your ancestors, dwelt in Ægina until the people received him back; and Miltiades and Pericles owing to the state, one of them thirty and the other fifty talents, did not harangue the people until they had paid. And it would be a most shocking thing to happen, that, while your greatest benefactors could not obtain the privilege of acting for you contrary to the established laws, a person who has done no service, but committed innumerable offences, should be seen thus easily, against justice and the public good, to have obtained from you a license to infringe the laws? But why need I speak of ancient times? Consider the men of your own day, and see if any of them has ever been so outrageous. You will not find one, if you look closely into the matter. Let me further observe—when any one prefers an indictment to the Judges against a law or a decree, the law or decree is invalid, and the proposer or mover makes no impudent resistance, but acquiesces in what you decide, even though he is the most powerful orator or most able politician among you. Is it not monstrous then, that what your whole assembled body has voted according to the laws should be invalid, yet that Aristogiton's inclination to break the laws should, with your consent, have greater effect than the laws themselves? Again—when any prosecutor has failed to get a fifth part of the votes, in those cases in which the laws declare that he shall not

indict or arrest or give into custody[1] for the future, the result is similar: none of the persons under any such penal sentence ventures to act in defiance of it. Aristogiton, as it seems, is the only man whose will is to be superior to the court and to the law. Neither you nor your ancestors ever repented of observing all these ordinances, for it is the preservation of democracy, to overcome its enemies either by counsel or by arms, but to submit to the laws either by choice or by constraint. And that such course of action is becoming, is acknowledged on the part of the defendant himself. For after the misfortune of the Greeks at Chæronea, when the city was in the extreme of peril, fearing for her very foundations, and when Hyperides moved[2] that the disfranchised should be restored to their rights, so that all might join zealously and harmoniously in the struggle for freedom, if any danger of such magnitude should menace the state, Aristogiton indicted this decree as illegal, and appeared as prosecutor in court. Is it not shocking, that this man should not allow any citizen to obtain his franchise to accomplish his country's deliverance, and yet should demand the same privilege from you to pursue his own lawless course? Surely that vote was far more legal and more just than the one which you now ask these jurors to pass for you. The one was equitable and applied to all the citizens; the other was inequitable, designed for your special advantage, and yours alone. The one had for its object to prevent a peace by whose terms a single man became master of the whole government; the other to give to you alone a license to defeat the resolutions of these men, to transgress with impunity the laws transmitted from ancient times by your ancestors, and to do whatever you please. I should be glad to ask him whether his indictment of the decree was just and lawful, or, on the contrary, unjust and illegal: for, if it was improper and injurious to the people, for that very reason he deserves to die; if it was advantageous and beneficial to the many, why do you now require these men to pass a vote contrary to what you yourself proposed? The truth is, neither were his former proceedings just, nor are his present lawful or expe-

[1] As to ἐφήγησις, see Vol. iii. Appendix VIII. p. 358.
[2] See Vol. ii. Appendix II. p. 319.

dient for you. I see that you, men of the jury, hold this opinion in regard to yourselves: for you have before now given judgment upon many informations against private men. Would it not be shameful that you should strictly put the laws in force in your own case, and yet be so resigned in the case of these busybodies, who make themselves a public nuisance and endeavour to lord it over all?

Surely none of you can take this view, that it ought to be as I say, but that, on account of Aristogiton's good character and usefulness to the state, you ought to connive at his occasionally breaking the law. For, that he is a man of bad and corrupt character, Lycurgus, as it seems to me, has already abundantly proved; and that he is of no use to the state, you may see easily enough from his political conduct. What man has he ever brought into court and convicted upon these charges which he prefers? What revenue has he procured for you? What decree has he drawn, the acceptance of which you have not afterwards deliberately repented of? For here he is so wrong-headed and such a barbarian in his nature, that, when he sees you slightly irritated against any persons and more excited than you ought to be, he catches at your wishes in the moment of your anger, and opposes your interests. A statesman acting for your good ought not to follow the passions which spring out of sudden anger, but to be guided by reasonable calculations, by circumstances and opportunities: the former are apt suddenly to change, the latter to endure and subsist somewhat longer. The defendant, disregarding these considerations, exposes the secret weaknesses of the government, so that you are compelled to make the same things valid at one time and invalid at another.

But perhaps, because his principle is to rail against all men, to bawl people down, and object to everything that is said, it is proper on these accounts to preserve him. Nay, men of the jury; I declare to heaven, these things which are constantly occurring on our platform are a disgrace, and through the desperation of these persons the better class of you have come to be ashamed of meddling in politics. However, if such proceedings are to any one's taste, you will be at no loss for people of that sort; the platform is still full of them. For it is not difficult to find fault with advice which has been given; the difficult thing is to advise and persuade you to

pass good resolutions. Besides, if he had not deceived you before by means of such arguments, when he was tried on the former information—though even then you could not justly make any concession contrary to the existing laws; for you must not allow some persons to break the laws and expect the rest to obey them—yet, I grant, you might then with more reason have trusted him and shown him favour and foregone some of your strict rights. But when, after having let him off in hopes of amendment, you shortly afterwards punished the same person again as a mischievous orator and politician, what decent excuse is left for you, if you are imposed upon now? For why trust to words where you have the experience of facts? In cases where you have not proof positive in your possession, it may be necessary to judge by words. I am surprised at people who are so constituted, that, while they entrust their private interests only to men of long-tried honesty, they will confide the interests of the commonwealth to men whose baseness has been proved beyond dispute. No one would put a dog of inferior breed and quality to guard his flock; and yet some say that, to watch your public men, you should employ the first persons who present themselves, who, while they pretend to inform against delinquents, require the utmost watching themselves.

If then you are wise, reflect upon these things; have done with the persons who are always talking of their attachment to you; but exert every possible vigilance on your own part, and allow none to defeat the laws, especially none of those who boast of their ability to speak and move for the good of the many. It would be a terrible thing that, while your ancestors feared not to die in defence of the laws, you should not even punish those who transgress them; and that, when you have voted to erect in the market-place a brazen statue of Solon who framed the laws, you should show such an utter disregard of the laws themselves, on account of which he has received such distinguished honour. What an absurdity it would be, that in legislating you should manifest displeasure against the vicious, yet, when you have caught any of them in the act of crime, you should let them off with impunity; and that, while the lawgiver, a mere individual, incurs on your behalf the hatred of all rogues, you yourselves, even when you are assembled together to look after your interests,

instead of showing your abhorrence of rogues, are overcome by the roguery of one man; and, while you have made it punishable with death for any one to produce a non-existing law, you allow persons to escape without punishment who give to our existing laws the character of non-existing.

You will perfectly comprehend how great an advantage it is to obey the established laws, and how great an evil to despise and disobey them, if you will place before your eyes and examine separately the advantages arising from the law and the results of their infraction. For you will find that the latter performs acts of madness and intemperance and encroachment, the former does the work of intelligence and wisdom and justice. Here is the proof. Those states we shall see are the best governed, in which there have been the best legislators. As bodily ailments are checked by the discoveries of medical men, so the ferocity of the mind is removed by wisdom. In short, we shall find nothing noble or useful which is not associated with law: indeed the whole universe, the heavenly bodies and the seasons, as they are called, if we may trust to what we see, appear to be governed by law and order. Therefore, ye men of Athens, come with mutual encouragement to the assistance of the laws, and pass sentence upon those who have wilfully offended against what is holy. If you act thus, you will perform your duty, and give the most satisfactory decision.

THE ORATION AGAINST APHOBUS—I.

THE ARGUMENT.

The speeches against Aphobus, the first ever spoken by Demosthenes, were delivered in a cause of his own, which came on for trial B. C. 364, when he was in his twentieth year. The circumstances out of which it arose are gathered mainly from the speeches themselves; but it will assist the reader to give a brief account of them.

Demosthenes, the father of the orator, was a man of considerable property, the greater part of which was embarked in trade and mercantile speculations. The total amount of capital which he died possessed of, (the details of which are given below,) was estimated at nearly fourteen talents. He left a widow and two children; a son at the age of seven, and a daughter at the age of five. By his last will he bequeathed the guardianship of his children and his property upon certain trusts to his two nephews, Aphobus and Demophon, and an old friend, Therippides. The directions were, that Aphobus should marry the widow and receive with her a portion of eighty minas: Demophon was to receive two talents, on condition that he married the daughter when she reached the age of puberty: and Therippides was to enjoy the interest of seventy minas until the son came of age. The residue of the estate was ordered to be invested, so as to accumulate for the benefit of the young Demosthenes.

It appears that the guardians grossly neglected their duty, not only failing to perform the conditions upon which they took their own legacies, but squandering, wasting, or appropriating to their own use the bulk of the property. They made no attempt to invest it as the will directed; and the consequence was that, by the time Demosthenes had attained his majority, *i. e.* when he had completed his seventeenth year, the estate, instead of being vastly increased (as it might have been by good management), was reduced to about a tenth of its original value. He charges them with having committed during the interval divers acts of fraud and meanness, and among others, with having cheated his preceptors of their dues.

Upon the attainment of his majority, Demosthenes called upon the three guardians to render him an account of the manner in which they had disposed of the estate. Their conduct had become pretty notorious, and the account, which, after various excuses and delays

they at last rendered, was not wholly unexpected. The breach of trust however was so flagrant, and the loss which it entailed so enormous, that nothing remained for Demosthenes but to seek redress by legal proceedings. Here indeed the chances seemed against him; for he would have to contend with powerful and experienced adversaries, whose resources were augmented by the very plunder which they had taken from him. In order to recover his rights, it would be necessary to use every possible diligence in collecting proofs of the fraud, and preparing for the struggle in court, in which he would have to appear as plaintiff, and (at least) open his case to the jury. For the Athenians (as I have already explained) required the parties to appear in person, and in general to conduct their own causes; though a youth like Demosthenes would be permitted, after a formal opening of his case, to leave the substantial part of it to the advocacy of a friend. Demosthenes however, as we have reason to believe, had no desire to escape from the personal contest, or to procure an advocate to plead his cause. It was just about this time that he heard Callistratus make his celebrated defence in the affair of Oropus, which fired him with the ambition to become an orator; he felt, as we may well imagine, that he had within him the power to become one. At the same time he must have known, and must have been advised, that for a contest so important, upon the issue of which his future fortunes in life might depend, some laborious preparation was indispensable. To ensure success, there was more required than fluent speaking or an impassioned address to the jury. He must know something of Attic law, more particularly the mercantile branch of it, and that which related to wills and wardship; also of the procedure and practice of the Athenian courts, the rules of evidence, and the various artifices in the management of causes, which are never thoroughly learned except from long experience. It was impossible for a youth of eighteen to obtain a competent knowledge of these things, and to meet so pressing an emergency, without assistance.

Under such circumstances, Demosthenes applied for aid to a person of that class, whom the great increase of litigation of Athens had caused to spring up, and who united in themselves some of the functions of our attorney and special pleader. Their chief business was to prepare speeches for the suitors, or rather, to get up their cases for them: the more eminent also gave lectures, or lessons in rhetoric. The person selected by Demosthenes was Isæus, and a better man could not have been chosen. He had been a pupil of Isocrates, whom, though he was inferior in the graces of diction, he greatly surpassed in vigour of reasoning and practical knowledge of the world. He was (as we should say) the best real property lawyer at Athens, where questions of disputed inheritance (not without complexity and difficulty) were frequently occurring. His extant speeches on these subjects, written for his clients, are master-pieces of legal argument, expressed in clear and forcible language. Under the tuition of this able man Demosthenes placed himself, and obtained just the assistance which he needed. In the course of the two years after he had come of age, he so employed

his time under the guidance of Isæus, as not only to prepare himself for the conduct of his own cause, but, by the knowledge which he acquired of Attic jurisprudence and public business, to lay the foundation of his future fame as an orator. It has been said that Isæus either composed or corrected the speeches which have come down to us against Aphobus and Onetor. A similarity in the style to his acknowledged works, as well as the relation which existed between him and his pupil, renders either of such suppositions probable enough; but, however that be, we may take it for granted, that Demosthenes received from him those instructions as to the preparing of his case for trial, the handling of it in court, the arrangement of facts, evidence, and arguments, which were far more important to the issue than the mere language in which he would clothe his address to the jury.

During the long interval which elapsed before the actual commencement of legal proceedings, it seems that several attempts were made by the parties or their common friends to obtain a settlement of the dispute, or a reference to arbitration; but all proved ineffectual. Aphobus at one time had agreed with Demosthenes to refer the matters in difference between them to three private arbitrators, whose decision would have been final; but finding, as Demosthenes tells us, that the arbitrators were likely to decide against him, he revoked the submission, which he was at liberty to do, either because he had not entered into a binding agreement, or perhaps because any submission of that sort was revocable before, or within a certain time before, the award. Nothing then remained for Demosthenes but an appeal to a legal tribunal; and accordingly in the year B.C. 364, in the Archonship of Timocrates, he commenced three several actions against his three guardians, prosecuting that against Aphobus immediately, and postponing his proceedings in the other two until the first should be decided.

After the *instructio litis* before the Archon, the cause was sent to be tried in the first instance before one of the official arbitrators, who gave his decision against Aphobus, from which he appealed to a jury. Fearful however of the result, he attempted to get rid of the whole affair by an artifice, and, a few days before the day of trial, he procured one Thrasylochus, a friend of his own, to tender to Demosthenes the trierarchy, or the alternative (if that were declined,) an exchange of estates. This plot was defeated, as the reader has already learned from the speech against Midias, (see Vol. iii. page 91,) by Demosthenes raising the money, twenty minas, to pay the trierarchal charge. On the appointed day the cause came on for trial; the plaintiff and defendant were both heard; and the jury gave a verdict for the plaintiff, assessing the damages at ten talents, the amount claimed.

Aphobus was by no means disposed to acquiesce in this verdict. He made an attempt to defeat it, by proceeding against one of the witnesses for false testimony; the conviction of whom might possibly have led to the granting of a new trial in the original case. In the third speech against Aphobus, Demosthenes defends this witness, who, we may presume, was acquitted. Other measures, of an illegal and fraudulent character, were taken by Aphobus, with a view to

prevent Demosthenes obtaining execution, or reaping the fruits of his verdict. These form the subject of the two speeches against Onetor. How much Demosthenes ultimately recovered from his guardians, is unknown to us. Plutarch represents, that it was but a small portion of his estate. That it was much less than he expected and was entitled to, we gather from what he himself says in the oration against Midias, and from other circumstances. The actions against Demophon and Therippides were never tried; most probably they were compromised. We know that Demon, the father of Demophon, who was originally hostile to Demosthenes, afterwards became reconciled to him; for Demosthenes composed for him the speech against Zenothemis. In the speeches against Aphobus there are some indications that Demophon and Therippides did not entirely identify themselves with the cause of their colleague; and it is very likely, that the issue of the first trial would incline them to come to a settlement of their own cases.

We may conclude upon the whole, that Demosthenes, though he may have got back something considerable, still remained a great loser by the frauds of his guardians. Out of evil however sometimes comes good. He had sustained a pecuniary loss; but in other respects he was a gainer. He had been thrown at an early age upon his own resources, and compelled to make extraordinary exertions and to fight an uphill battle, which, being attended with success, both gave him self-confidence and earned for him a high reputation. His early education had been in some degree neglected; he was forced to undertake the task of self-education, which is often better than scholastic training. He learned more from Isæus, under the pressure of his necessities, than he would have done by attending any number of rhetorical lectures without such pressure; and the school of life gave him a more useful lesson than he could have got in the shade of the Academy. Even in a pecuniary point he was perhaps ultimately no loser; for the knowledge which he had acquired enabled him to follow the profession of Isæus, and write speeches for others. He employed himself in this way for many years with great advantage, and only discontinued the practice when politics had begun to absorb all his attention. The speeches which we are now considering are, on account of their own merits, well worthy of our perusal; but they are chiefly interesting because the cause in which they were delivered was the first step of Demosthenes on the arena of the world. Here he first stood forth as the lawyer and the man of business. Out of these in due time grew the statesman. Nor can we doubt that from his early troubles and difficulties he imbibed that love of right and truth, and that abhorrence of injustice, which became the animating principles of his subsequent life; to which his country was indebted for his exertions in her cause, and to which we owe the splendid monuments of his eloquence.

In his opening speech in this case, Demosthenes, after stating the contents of the will, which was in the possession of the guardians and not produced by them, shows what the property of his father consisted of; which, for the convenience of the reader, is subjoined in a tabular form:

	Talents.	Minas.
32 or 33 slaves, carrying on the trade of sword-cutlers; 20 ditto sofa-makers	3	50
Stock in the two trades	2	30
A dwelling-house	0	30
Furniture, plate, jewels, &c.	1	40
Lent at interest of 12 per cent.	1	0
Lent on a bottomry contract	1	10
Lent without interest	1	0
Cash in the house	1	20
In Pasion's bank	0	24
In Pylades' bank	0	6
In Demomeles' bank	0	16
Total amount of capital	13	46

He proceeds to show that upon his coming of age they had given into his possession only the house, fourteen slaves, and thirty minas in money; the total amount of which he puts at seventy minas; although they had taken their own legacies, without performing the conditions of the will; Aphobus, in particular, having received the eighty minas, his mother's marriage portion, without marrying her, and having also taken her jewels and plate. He proves that they had rendered a false account of the profits of the sword-cutlery; that they had altogether made away with the twenty sofa manufacturers, and the whole amount of the stock in trade; and that the explanations which the three guardians gave of this were unsatisfactory and inconsistent. They had made a return to the property tax, on behalf of their ward, which proved the value of the estate to be what he represented, as appeared by the public books. The large legacies bequeathed to the guardians were of themselves a clear proof of the falsehood of their account; for the testator would never have given them so much, had there not been a considerable residue for his son; they were not the principal objects of his bounty, but he had made handsome bequests to them, in order to secure their fidelity. Of the contents of the will they had given different accounts; but their refusal to produce it disentitled them to belief. Their omission to invest the residue, as required by the will, was not merely evidence of waste and breach of trust, but was a substantive fraud by the Athenian law. If it had been properly invested, his estate might in the course of ten years have been doubled or even trebled in value, as those of other persons had been. In estimating the damages, the jury were bound to take all the circumstances into account; they should look at what Aphobus had wasted or appropriated either singly or jointly with his colleagues; they should consider the value of the estate at the time of the testator's death, and what it might have yielded by judicious management; and having regard to all the circumstances, they should give him just and reasonable compensation. The facts relied upon are proved by a multitude of witnesses, and partly by the admissions of the guardians, each of whom, in his anxiety to clear himself, had made admissions tending to implicate

his colleagues. The refusal of Aphobus to submit to friendly arbitration, and the decision given against him by the official arbitrator, are insisted upon, as raising a strong presumption in favour of the plaintiff. Some parts of the intended defence, which had become known to him in the course of the proceedings, are shown by Demosthenes to be fallacious or false in fact: after which, he concludes with a general peroration and appeal to the feelings of the jury.

For explanation of some matters of law the reader is referred to the first and second Appendices.

If Aphobus, men of the jury, had been willing to act like an honest man, or to submit the matters in dispute between us to the arbitration of friends, there would have been no need of lawsuits or troublesome proceedings. I should then have been contented to abide by their decision, which would have put an end to all our differences. Since however the defendant has declined the umpirage of persons well acquainted with our affairs, and has chosen to come before you, who have but a slight knowledge of them, I am compelled to seek for redress at your hands. I am aware, men of the jury, that it is dangerous for one, who by reason of his youth is inexperienced in the world, to risk his all in a contest with persons who are able speakers, and know how to provide all the materials of defence. Yet, notwithstanding my disadvantages, I am confident that I shall obtain justice in this court, and that (in stating the case at least,) young as I am, I shall speak well enough to make you understand the facts and the issues which you have to try. I entreat you to give me a favourable hearing, and, if you think I have been wronged, to give me the justice which I am entitled to. I shall compress my speech into as short a compass as possible, commencing with a statement of those matters, which will give you a clear view of the question.

Demosthenes, my father, died possessed of property to the amount of nearly fourteen talents. He left two children, myself aged seven years, my sister aged five; and a widow, my mother, who had brought him a fortune of fifty minas. Being anxious to make the best provision for us, when he was on the point of death, he left the whole of this property to the care of the defendant Aphobus and Demophon the son of Demon, who were his nephews, the one by his

brother, the other by his sister, and to Therippides of the township of Pæania, who was no relation, but had been one of his earliest friends. To the last-mentioned person he gave the interest of seventy minas, parcel of my property, to be enjoyed by him until my coming of age,[1] in order that he might not be tempted by avarice to mismanage my affairs. To Demophon he gave my sister with a portion of two talents, to be paid immediately; and to the defendant he gave my mother with a portion of eighty minas, and the use of my house and furniture. These bequests he made to them, believing that, the closer the ties by which they were connected with me, the more faithfully would they act in the execution of the trusts confided to them. Upon my father's death, these men immediately took possession of their own legacies, and, as my guardians, they took the management of all the rest of the estate, which they retained for a period of ten years; and now at the end of this period they have given up to me the house, and fourteen slaves, and thirty minas in money, amounting altogether in value to seventy minas; of all the residue they have defrauded me.

This, men of the jury, is a concise statement of the amount of the injury which they have done me. That the property left me by my father was as much as I have stated, they have themselves given the best proof; inasmuch as they consented on my behalf to be rated to the property tax at one-fifth of the whole value of my estate, the same per centage at which Timotheus, the son of Conon, and men of the largest fortunes were rated.[2] It will be better, however, to explain to you more particularly what portions of my estate were producing a profit, and what were unproductive, and what were their respective values; for I am sure that, when you are accurately informed of these particulars, you will see, that no trustees ever plundered an estate in so flagrant and barefaced a manner as these men have plundered mine. I will produce witnesses to prove, that they consented on my behalf to be taxed in the manner I have stated, and that my father, so far from leaving me an estate of only seventy minas, left me one so considerable, that even these men were not able to conceal its value from the state. Take and read this deposition.

[1] See Appendix I.

[2] See Vol. i. Appendix IV.

[*The Deposition.*]

From this evidence it is clear, what the value of the property was. Three talents is the rateable value of an estate of fifteen; this was the proportion in which they thought proper to be assessed. You will have a better notion of the case, if I explain to you the component parts of the property. My father, men of the jury, left two manufactories, in each of which a considerable trade was carried on. One was a sword manufactory, in which thirty-two or thirty-three slaves were kept at work; they were worth (most of them) about five or six minas each, none being worth less than three;[1] and they produced a clear annual income of thirty minas. The other was a sofa manufactory,[2] in which were employed twenty slaves, who had been pawned to my father for a debt of forty minas, and brought him in a clear income of twelve minas. He left in money as much as a talent, lent at the interest of twelve per cent, which produced him more than seven minas a year. This was the part of my father's capital which was productive, as these men themselves will admit; the whole amount of the principal being four talents and fifty minas, and the annual proceeds fifty minas. Besides this, he left ivory and iron, used in the manufacture, and wood for sofas, worth altogether about eighty minas; and gall[3] and copper,

[1] As Demosthenes has stated just before, that the house and fourteen slaves given up to him were worth only forty minas, whereas by this statement it appears that none of the sword-cutlers was worth less than three minas, and that the house was worth thirty minas, Reiske, Boeckh, and others accuse the orator of having made an intentionally false statement to deceive the jury; for the house and slaves given up to him could not (they argue) be fairly valued at less than one talent, forty-two minas. Doubtless, if the value at the end of the ten years had been the same as at the beginning, this charge would be well-founded; and Demosthenes, or Isæus, must have been very simple to imagine that the jury could be deceived by so obvious a miscalculation. But is there any difficulty in supposing that both the house and the slaves had greatly deteriorated in value? The house may not have been kept in proper repair; the slaves may have grown old; and the guardians very probably left for Demosthenes those of the poorest quality.

[2] So Thirlwall translates it. Pabst, "Bettgestellmacher:" *makers of bedsteads.*

[3] Obtained from the oak-apple, and used for dyeing the hilts of swords or handles of knives. Pabst, "Galläpfel."

which he had purchased for seventy minas, and a house worth thirty minas, and furniture and plate, and my mother's jewels and wearing apparel and ornaments, worth altogether a hundred minas, and eighty minas in the house in money. He left also seventy minas which were lent to Xuthus on a maritime adventure; twenty-four minas in Pasion's bank, six in that of Pylades, and sixteen in the hands of Demomeles, the son of Demon; besides friendly loans,[1] to the amount of a talent, lent to different persons in sums of two and three minas. The total of these last mentioned sums is more than eight talents and thirty minas, which, together with those first mentioned, you will find comes to about fourteen talents.

Such is the amount of property, men of the jury, which was left by my father. It is impossible for me, in the time here allowed me, to explain all the details of the fraud; to specify what they have taken severally, and what they have jointly embezzled. I must keep these matters distinct. It will be time enough to discuss the frauds of Demophon and Therippides, when I deliver in my charges against them.[2] Now I shall speak of the defendant, and of what I know, and his colleagues prove, to be due to me from him. I will first show you, that he is liable for the marriage portion, eighty minas; then I shall go to the other parts of the case, and state them as briefly as possible.

Immediately after my father's death the defendant entered and dwelt in the house, according to the directions of the will, and took possession of my mother's jewels and the plate, amounting in value to fifty minas. Besides that, he received from Therippides and Demophon the proceeds of the sale of the slaves, until he received the full amount of the marriage portion; upon which, previous to his departure for Corcyra with a ship of which he had the command, he sent Therippides a written acknowledgment of the sums paid him, in which

[1] Χρᾷν or κιχράναι is "to lend without interest:" δανείζειν "to lend at interest," though the distinction is not invariably observed. See Meier and Schömann, Atl. Proc. p. 499.

[2] The actions had been brought, but the plaints not delivered, at least, a full particular of the charge had not been delivered. What was commonly called λῆξις or ἔγκλημα is here called γραφή, which in its general sense may signify any writing. See Vol. iii. p. 356, note 3; and pp. 374, 375.

he admitted that he had received the marriage portion. These matters can be proved by Demophon and Therippides, his co-trustees; his acknowledgment of the receipts can be further proved by Demochares of Leuconium, the husband of my aunt, and by many other witnesses. For when it was found that the defendant refused to maintain my mother, though he was in possession of her fortune, and declined also to let the property,[1] desiring to retain the administration of it in the hands of himself and the other guardians, Demochares remonstrated with him upon the subject. Aphobus heard him, and never denied that he had the money, never expressed any anger as if he had not received it, but admitted the fact, and said that he had had some disputes with my mother about her jewels, and that, when these disputes were settled, he would do everything that was right and proper in regard to the maintenance and all the rest of my affairs. If now it can be clearly shown, that he made these admissions before Demochares and the other persons who were then present; that he received from Demophon and Therippides the money arising from the sale of the slaves, in part payment of the marriage portion; that he gave a written acknowledgment to his co-trustees of having received the portion, and that he occupied the house immediately after the death of my father; will there not be abundant proof that he has had the portion, and that his present denial of the receipt is barefaced impudence? In support of what I say, you shall hear the depositions read.

[*The Depositions.*]

It appears then, that he has received in this way the marriage portion. Now, if he refuses to marry my mother, he is by law indebted to me for the amount of her portion and interest upon it at eighteen per cent.; however, I will set it down at twelve per cent. only. Adding together then the principal and interest for ten years, it makes about three talents. I have thus shown you that he received this money, and confessed it in the presence of many witnesses. Besides, he has in his possession thirty minas (being the net

[1] Pabst—"die Habe zu vermiethen." For an explanation of this, see Appendix II.

profits which he has received from the manufactory), of which he has made the most impudent attempt to defraud me. The income, which my father was deriving from this at the time of his death, was thirty minas; and, upon the sale by these men of one half of the slaves, I ought, according to the ratio of the former profits, to have had fifteen minas. Therippides, who superintended this business seven years, has rendered an account to me of eleven minas for every year, which is less by four minas a year than it ought to have been. The defendant however, who managed it for the two first years, gives no account of any receipts at all, but sometimes says that there was no business done in the manufactory, and sometimes that he himself was not the manager, but that the foreman, Milyas, a freedman of mine, conducted the business, and that I must look to him for an account. If he should repeat any of these assertions, he will easily be convicted of falsehood. If he should say that there was no business done in the manufactory, remember that he has himself given in an account of monies expended, not upon provisions for the men, but upon stock, ivory for the trade, and sword-hilts, and other materials, implying that the business was then going on. Further, he charges me with money paid to Therippides for the hire of three slaves, who were in my workshop and belonged to him. But, if there was no work done, neither ought Therippides to have received anything for the loan of his men, nor ought I to have been charged for such a disbursement. Again, should he say that there was work done, but that there was no market for the manufactures, he ought at any rate to show that he has delivered up to me the manufactured articles, and to produce witnesses who saw them delivered; otherwise, how can you doubt, when the business has clearly been carried on, that he is liable to me for thirty minas, the amount of two years' income arising from it? Should he however decline to make any of these statements, and say that Milyas was the person who conducted the whole business, how is it possible to believe him, when he asserts that he has himself made all the disbursements, amounting to more than five minas, and that any profit which has accrued has been received by Milyas? For my part, I think it more probable (supposing that Milyas did conduct the business), that he (Milyas) made

the disbursements, and the defendant received the profits. Such is the inference I should draw from the general disposition and impudence of the defendant. Take and read this evidence to the jury.

[*The Depositions.*]

These thirty minas then he has received from the manufactory, and the interest on them for eight years, which, reckoning at twelve per cent. only, amounts to thirty minas more. These sums he has embezzled himself, and they, added to the marriage portion, make, principal and interest together, about four talents. I shall now proceed to specify the effects which he has joined with the other guardians in embezzling; some of which he pretends were not left at all by my father. And first I will show you how very audaciously and openly they endeavour to cheat me out of the twenty sofa-makers, who were given to my father in pawn for forty minas, and whom he certainly left at his decease, though the guardians have made away with them. They all admit that these men were left by my father in our house, and that they produced him in his lifetime an annual income of twelve minas. Yet from the same men, in a period of ten years, the guardians (by the account which they have rendered to me) have not derived a tittle of profit; nay, the defendant is hardy enough to charge me with an expenditure upon them of ten minas. The men themselves, upon whom this money has been laid out, they have never produced, but have trumped up an idle story about the man who pledged the slaves to my father, viz. that he is a vile fellow, a defaulter to his club,[1] and over head and ears in debt; and they have summoned a great many witnesses to prove this of him. As to the slaves—who got them; how they went out of the house; or who carried them off; or who has recovered them by judgment—they have no account to give. Now, if there had been any truth in their story, they would not have brought evidence to prove the villainy of this person (with which I have no concern), but would have done their utmost to keep possession of the slaves, and shown me the persons who took them, and not lost sight of a single one. Instead of this, after admitting that they were left by my father, and

[1] See Vol. iii. Appendix XI.

taking them into their own possession, and receiving the profits of them for ten years, they have in the cruellest manner made away with the whole lot of them. In proof of what I say, take and read the depositions.

[*The Depositions.*]

I will now give you the strongest proof that Mœriades was not in bad circumstances, and that my father had not advanced his money on these slaves imprudently. When Aphobus got possession of the men, as you have just learned from the witnesses, he actually lent money upon them himself. This was in violation of his duty as a guardian, which should have led him rather to prevent any one else from lending on such security; however, he did lend to Mœriades upon these slaves five minas, which he admits to have been duly repaid by him. Is it not a shame, that (besides having obtained no profit from the slaves) I, who first advanced money upon them, should have lost my security, while a person, who lent his money upon property pledged already to me, and whose loan was so long subsequent to mine, should have thereby recovered both principal and interest, and sustained no loss? In confirmation of what I say, take the deposition and read it.

[*The Deposition.*]

Consider now, what a large sum they have embezzled by these sofa-makers—principal, forty minas; and interest thereon for ten years, two talents; the annual profit which they obtained from them having been twelve minas. Is this a trifling[1] matter, an obscure item, and one easy to be misreckoned, or is it not nearly three talents which they have openly robbed me of? As they have divided this plunder between them, I ought surely to recover the third part from the defendant.

Pretty much in the same way, men of the jury, have they dealt with the ivory and iron which was left me. They do not produce it. Now it is absurd to suppose that a man

[1] Pabst—"Haben sie also etwa nur eine Kleinigkeit entwendet, vielleicht aus Versehen und von einem Gegenstande, wo man sich leicht verrechnen kann?" Auger—"Ce tort est-il léger? est-il douteux? Ce calcul en est-il difficile?"—which is not quite correct for παραλογίσασθαι ῥᾴδιον, the meaning being, "was it an item easy to be passed over, so that the miscalculation is venial?"

possessing so many sofa-makers, and sword-cutlers also, should not have left some iron and ivory; he must have had some, or what could the slaves have manufactured without materials? However, though my father possessed more than fifty slaves, and carried on two trades, and though one of the factories easily consumed two minas' worth of ivory per month for the couches, while the cutlery required the same quantity of ivory and iron besides; these men are impudent enough to say, that he left no such stock. That no credit is due to them, may easily be collected from my statements; but it can be shown also, that my father left such an abundance of these materials, as to be sufficient not only for his own men to use for the trade, but for general sale besides. For my father in his lifetime used to sell the stock unmanufactured; and, after his decease, Demophon and the defendant continued to sell it out of the house to any one that chose to buy. Now I ask, what must one suppose the quantity left to have been, when it appears to have supplied such extensive trades, and also to have been sold by the guardians? Was it small, do you think, or was it not much greater than I have alleged? Take these depositions, and read them to the jury.

[*The Depositions.*]

Of this ivory, you see, there is more than a talent's worth; of which they show neither the raw material nor the product —the whole has disappeared.

I shall further, men of the jury, prove to you, from the account which they render, and from their own admissions of receipts, that the three together have in their possession more than eight talents of my money, of which Aphobus is separately chargeable with three talents and ten minas. That you may understand the daring nature of their attempt, I will put down their disbursements separately at a greater amount than they themselves do, and will deduct the sums which they have paid me. Observe, the defendant (besides what I shall prove against him) confesses to having received a hundred and eight minas out of my effects; Therippides confesses to two talents, and Demophon to eighty-seven minas; which makes altogether five talents and fifteen minas. Of this sum there are nearly seventy-seven minas, which were not received all at once (viz. the income from the slaves), and

nearly four talents, of which they got immediate possession. Adding to this last sum the interest of ten years at the rate of twelve per cent. only, the whole, principal and interest together, makes (you will find) eight talents and ten minas. From the seventy-seven minas, proceeds of the manufactory, I must deduct the maintenance of the men, on whom (as I admit) Therippides spent seven minas a year. In ten years the maintenance comes to seventy minas, leaving a balance upon this account in my favour of seven minas; to which I forego my claim, and put down so much more to their credit than they themselves do. I must next deduct from the eight talents and odd the money which they handed over to me upon my coming of age, and that which they paid for property tax. The defendant and Therippides paid me thirty-one minas, and they charge me, for payments to the property tax, eighteen minas. I will be liberal to them, and set down this last sum at thirty minas, that I may leave no pretence for cavil. Subtracting then the one talent from the eight, there remain seven, for which (according to their own admissions) they must be liable; and therefore, though they dispute and cheat me out of everything else, they ought at least to pay me this sum, which they acknowledge to have received out of my estate. But what is it they do? They show me no return of interest for this money, and tell me they have spent all the principal, besides the seventy-seven minas; and Demophon has gone so far as to set me down as his debtor. Is not this plain and downright impudence? Is it not rapacity of the most atrocious description? I know not the meaning of atrocity, if conduct so outrageous falls not within the term.

It is clear then, that the defendant, who confesses that he has himself received a hundred and eight minas, is liable to me for these, and the interest upon them for ten years; making altogether about three talents and ten minas. To prove the truth of what I say—that each of the guardians states in his account, that he received so much, but that he has spent it all—let us have the depositions read.

[*The Depositions.*]

I suppose, men of the jury, you are now fully enlightened as to these points, and see the frauds and thefts which each

of these men has committed. The information however would have been more satisfactory, if they had chosen to give up my father's will, in which (as my mother says) he enumerated everything which he left, specified the fund out of which the guardians were to take their legacies, and directed the property to be let. They allow that there was a will, but refuse, on my request, to produce it, for fear of making known the amount of my father's property embezzled by them, and not wishing it to appear that they have received their legacies—as though they are not sure to be convicted by the circumstances of the case. Read the evidence of the witnesses who depose to their answers.[1]

[1] Each of the parties in a cause at Athens was at liberty to put questions to the other, and to insist on having them answered, both at the hearing before the magistrate and at the trial, though the latter was not so common. The answers given before the magistrate were taken down in writing, and afterwards produced in evidence, if thought expedient, verified by the depositions of witnesses who heard the answers given. Here Demosthenes produces the answer of Aphobus, which had been taken down before the Archon; he calls it *τὴν τούτου ἀπόκρισιν*. It may be thought from the words *ὧν ἀπεκρίναντο*, the verb being in the plural, that answers of the colleagues are read also. I apprehend however that this is not so; but that depositions, not answers, of the colleagues are produced, and that the expression *ἃν ἀπεκρίναντο* is (in perfect strictness) applicable to Aphobus only. I say in perfect strictness, because in a loose and popular way of speaking anything which is said in reply to a question may be called an answer. But the distinction here is between the answer of a party in the cause and the evidence of a witness. We know that each of the guardians had—and perhaps it was necessary he should have—a separate action brought against him. In such action his colleagues could not be treated in law as parties, notwithstanding the interest which they might have in the result; they could therefore only furnish evidence for or against either party in the regular way, by testimonial deposition and appearance in court to confirm it. (See Vol. iii. Appendix IX. pp. 381—389.) Demosthenes compelled Demophon and Therippides to give evidence in this action, summoning them before the Archon, and taking the chance of what they would say. They made some admissions which were for his advantage, and therefore he put in their evidence, notwithstanding that it contained other statements to his disadvantage. We find him taking the same course in a suit against Demon, in which he called Aphobus as a witness, notwithstanding his hostility. (See Orat. cont. Aphob. III. 860, 861.) This point indeed does not rest upon conjecture. Speaking of the statement of Therippides, which is here put in, the orator says, *οὗτος μαρτυρεῖ*. Therippides was present, and *μαρτυρεῖ* is the term properly applicable to a testimonial deposition.

[*The Depositions.*]

This man, whose evidence you have just heard, declares that a will was made, and that the two talents were thereby given to Demophon, and the eighty minas to the defendant; but he denies that there was any mention of the seventy minas which Therippides received, or of the amount of property bequeathed, or a direction for the letting of it; for it is against his interest to admit these facts. Now read the answer of the defendant.

[*The Deposition.*]

The defendant says that the will was made, and that the money arising from the copper and the gall was paid to Therippides (which Therippides denies), and that the two talents were paid to Demophon; but, as to the legacy which was given to himself, though he admits it was mentioned in the will, he says he did not assent to it, in order that it may not appear to have been received by him. And he, as well as Therippides, says nothing as to the amount of property being stated in the will, or as to the letting clause; for it is against his interest too to make these admissions. The amount however is not the less apparent, though they will not suffer it to appear in the will, when they admit that such large sums were thereby given to one another. For if my father, out of four talents and thirty minas, has given to two of these men three talents and twenty minas as marriage gifts, and to the other the interest of seventy minas, it is clear, I imagine, that he took these legacies not from a small property, but from a residue (bequeathed to me) of more than double their value. Surely he would not choose to leave me, his son, in poverty, and to heap wealth upon these men, who were wealthy enough already. No. It was because he had left me a very large estate, that he gave so handsome a legacy to Therippides, and the interest of the two talents to Demophon before the period of his marriage with my sister; for he

Compare also Orat. cont. Aphob. II. 838, 839; and cont. Aphob. III. 854.

I do not agree with Schäfer, as to the changing of *Θηριππίδης* to *αὐτός*. There is an irony in the naming of the person, which seems to have escaped the notice of that acute critic.

hoped to accomplish one of two purposes; either that by his bounty he might induce them to take better care of me, or (if they should turn out dishonest) that such gross ingratitude might exclude them from your mercy. And yet the defendant, who (besides my mother's portion) has taken the female servants and dwelt in the house, when the time comes to render an account of these matters, tells me he has enough to do to mind his own business. Nay, he is so grasping, that he has even cheated my instructors of their fees, and has not paid some of the property taxes, though he charges them to me. Take and read to the jury these depositions.

[*The Depositions.*]

Is there any way of showing more clearly, that the defendant has robbed me by wholesale without sparing the most trifling article? I have shown by numerous witnesses and proofs, that he admitted having received the marriage portion, and gave an acknowledgment thereof to the guardians; that he has received the income of the manufactory, and produces none; that of the other effects he has sold a part, and not paid over the proceeds, and the rest he has kept and concealed. By the account which he has rendered himself, I prove him guilty of large embezzlement; I show him also to have made away with the will, sold the slaves, and managed the whole estate in such a way, as not even my bitterest enemies would have done. I cannot conceive it possible to convict him more clearly.

He dared to say before the arbitrator, that he had paid debts for me out of the estate to Demophon and Therippides, and that they got a good share of my property; but neither of these facts could he prove. He did not show by the ledger book that my father left me in debt; nor has he called in evidence the parties, whom he says he paid; nor is the money, for which he accounts by referring to his fellow-guardians, equal in amount to his own receipts, but a good deal less. When the arbitrator questioned him upon these particulars, and asked him how he had managed his own estate, whether he lived upon the interest or spent the principal, and whether, if his guardians had served him so, he would have accepted of such an account from them, or have insisted upon having his money, principal and interest, paid;

he gave no direct answer, but tendered me a challenge,[1] offering to prove my estate to be worth ten talents, and said, if it fell short, he would himself make up the difference. I bade him prove this to the arbitrator; but he could not; nor did he show that his colleagues had paid me; (if he had, the arbitrator would not have given an award against him;) but he put in a piece of evidence, from which, in his address to you, he will endeavour to raise an argument.[2] If now he shall still assert that I am possessed of so much property, ask him from whom I obtained it, and require him to prove every statement by witnesses. If he makes it out by reckoning what is due to me from his colleagues, he will only have accounted for a third part, and even this I shall not be shown to have received. I shall myself prove, that each of the other two owes me as much as the defendant. It will not avail him therefore to say this; he must show, that either he or his colleagues actually paid me; otherwise, how can you attend to his challenge, when at all events he gives no proof that I am possessed of the sum in question?

Being at a loss to give any account of these matters before the arbitrator, and being convicted in every single point, as he now is before you, he ventured to tell a most wicked falsehood; that my father left me four talents buried under ground, and put my mother in charge of them. His intention was this—Either I should suppose he would repeat the story here, and so lose time in confuting it, when I ought to be proving other parts of my case; or I should pass it over as unlikely to be repeated, and then he would bring it forward, and I should get the less pity from you, for seeming to be rich. In support of this bold assertion, he put in no evidence, but fancied he should be believed on his bare word.[3] And when any one asks him, upon what he has spent so much of my money, he says he has paid debts for me, and so far represents me as being poor; but again, when it suits

[1] See Vol. iii. Appendix IX. p. 382.

[2] He does not think it worth his while to mention what it was. Pabst—"er brachte ein gewisses Zeugniss bei, worüber er jetz Etwas zu sagen versuchen wird."

[3] I adopt the reading ἀπ ἐκείνων. A more literal translation of the sentence is—"And he put in no evidence of this assertion, he that dared to make it, relying on his bare word as if he would be believed by telling the story."

him, he makes me out to be rich, as indeed I should be, if my father had left so much money in the house. That the whole story is absurd and impossible, is evident from several considerations. In the first place, if my father had no confidence in these men, it is plain, he would not have made them trustees at all, and then (supposing he had left the four talents in this way) he would not have mentioned it to them; for it were the height of madness to tell them of a hidden treasure, if he meant not to entrust them even with his visible property. In the next place, if he had confidence in them, he would surely not have committed the bulk of his property to their management, and have taken a small portion out of their hands. Again, he would never put this money in my mother's keeping, and yet give her in marriage to the defendant, one of the guardians; for it is absurd to suppose, that he would seek to secure the fund by her agency, and yet place her as well as the money in the power of one of the persons whom he distrusted. Further, if there had been any truth in the tale of the defendant, do you suppose he would not have taken my mother to wife, as the will directed? This he has never done; for though he took her fortune, the eighty minas, with the apparent intention of living with her, he afterwards married the daughter of Philonidas of Melita. But had there been four talents in the house, and in her custody (as he says), don't you think he would have flown to get both her and them into his possession? Or is it likely, that after so basely conspiring with his colleagues to plunder me of my visible property, which most of you knew to be left me, he would miss the opportunity of seizing a fund, which you would know nothing about?[1] Who will believe this? It is impossible, men of the jury; it is impossible. The truth is, my father put the whole of his property into their hands, and the defendant will tell this story, to diminish your compassion for me.

I have many other charges against him; but I will sum them up in a single word, and cut off the whole ground of his defence. He might have avoided all this trouble by letting the estate, pursuant to the laws which I am going to cite. Take and read the laws.

[*The Laws.*]

[1] Mark here the *petitio principii.*

According to these laws the estate of Antidorus was let, and for three talents and thirty minas he received at the end of six years six talents and more, as some of you know by ocular proof; for Theogenes of Probalinthus, the lessee, counted out that sum in the market place. I therefore, who had fourteen talents, calculating by the time and the terms of his lease, ought in ten years to have had my estate more than trebled.[1] Ask the defendant why this has not been done. If he says it was better not to let the estate, let him show, not that it has been doubled or trebled, but that the principal has been returned to me. If however it appears, that out of fourteen talents they have delivered to me hardly seventy minas, and one of them even made me out to be his debtor, how can one be satisfied with a word they say? Surely it is impossible.

Such being (as you have heard) the value of my estate, the third part yielding an income of fifty minas; the guardians, though insatiably covetous, though resolved not to grant a lease, might out of this income (without touching the capital) have maintained us, and paid the public taxes, and saved the residue; the other two-thirds they might have invested profitably, taken for themselves a reasonable sum to satisfy their desires, and, besides preserving the principal, increased my estate by means of the income. No such course did they adopt, but selling to one another the most valuable of my slaves, and getting rid of the remainder, they cut off the existing sources of my revenue, and carved thereout a considerable one for themselves. Everything they took in the same shameful manner, and now they all join in maintaining, that more than half my property was never left at all. They account to me, as though the estate, instead of being so large, was only five talents; and, not content with showing no income out of this, they don't even produce the capital, but coolly tell me that the original fund has been

[1] Suppose the estate of Antidorus to have been doubled in six years, it was capable at Athens of being more than trebled in ten years. But the fact shows that it was not quite doubled in six years. We may take it therefore that it might have been about trebled in ten years. Then Demosthenes argues that his own estate might have been more than trebled. Is there any overstatement in this? I do not see that there is: for very likely a greater profit might be made out of a greater estate.

expended; and for all this they are not ashamed of themselves. I wonder how they would have served me, if my pupillage had continued longer. They would find it hard to say. For when, after an interval of ten years, from two of these men I have got back such a little, and by a third I am set down even as a debtor—can you wonder that I give way to my feelings?[1]—it is clear that, if I had then been left an orphan of a year old, and been under the guardianship of these men six years longer, I should not have recovered even the miserable pittances which they have rendered me. For, if their expenditure of the assets was right and proper, the surplus which they handed over to me could not have lasted out six years; and they must either have maintained me themselves, or have allowed me to perish with hunger. Is it not hard, that estates left to others, of one or two talents, have been doubled and trebled by letting, and the owners called upon to serve public offices, while mine, which has been accustomed to equip ships of war, and contribute largely to the property tax, is now (by the robberies of these men) too poor to contribute anything? Are there words to describe the enormity of their conduct? They keep the will out of sight, to avoid discovery; and while they have lived upon the interest of their own property, and greatly increased it by plundering me, they have destroyed the whole of my capital, as if we had done them some cruel injury. You, men of the jury, even when you pass sentence on a public offender, do not strip him of all he has, but leave something in mercy to his wife or children. How unlike these guardians to you! They have had legacies from us to make them faithful in their trust, and yet they have committed this outrage upon us. They are not ashamed of their ruthless behaviour to my sister, who, though two talents were left her by my father, will now get no suitable provision. They have

[1] Or, "Is it not a just cause of indignation?" These words, πῶς οὐκ ἄξιον ἀγανακτεῖν, which appear to interrupt the thread of the argument, will create no difficulty, if we suppose that the orator has just exhibited some extraordinary warmth of manner, or that his voice has faltered, or that he has shed tears, or something of that sort. These words are then parenthetical; after which the argument proceeds. Pabst gives it a different turn, which I do not think the true one—"da ist doch wohl klar, dass man dadurch zum Unwillen gereizt werden muss."

acted without any regard to family connexion, just as though, instead of being friends and relations, they had been our deadliest enemies. As for me, I am in the greatest distress, without means to give my sister a portion, or to maintain myself. Then the government presses me for taxes, and no wonder, when my father left me an estate ample enough to pay them. Unfortunately, these men have got possession of the whole. And now that I seek to recover my own, I am in the greatest peril; for, if the defendant should get a verdict (which heaven forbid), I shall have to pay one-sixth [1] of the damages, a hundred minas. Again, the defendant, if your verdict be against him, will have an assessment of damages, and will pay them not out of his own money, but out of mine; whereas the penalty which I incur is fixed, so that I shall not only be deprived of my inheritance, but degraded from my civic rights, unless you now take compassion upon me. I pray therefore and beseech and implore you, to remember the laws and the oaths which you have taken as jurors, to give me the redress which I am entitled to, and pay no more regard to the entreaties of the defendant than to mine. Your pity should be bestowed not upon the guilty, but on the unfortunate; not upon such cruel plunderers as the defendant, but on me, who, besides being all this time kept out of my patrimony, am insulted by the spoilers, and in danger of losing my franchise. Deep indeed would be the anguish of my father, could he be sensible, that, after the portions and the legacies which he kindly gave to these men, I his son am in peril of being condemned to pay the sixth part of them; and that, while some of our countrymen have portioned out the daughters of relations and even friends in distress, Aphobus does not choose even to return a portion which he received, although it is ten years since it became due.

[1] See Vol. iii. Appendix IX. p. 391. And as to the loss of franchise consequent upon non-payment of the penalty, see p. 392.

THE ORATION AGAINST APHOBUS—II

THE ARGUMENT.

Aphobus having opened his case for the defence, Demosthenes here replies, answering some of the defendant's arguments, and recapitulating the chief points of his own case. He draws an affecting picture of the scene at his father's deathbed, where the testator solemnly committed his children to the care of the guardians, who accepted the trust, and yet had so grossly neglected it. The proceedings of Thrasylochus to get the plaintiff's claim transferred to him by means of the exchange, which had probably become notorious in the city, are here referred to, Demosthenes representing that it was a measure concerted between him and the guardians in order to quash the present action. In conclusion, he makes a pathetic appeal to the feelings of the jury, calling upon them to have pity on an injured orphan, and reminding them, that the property in his hands would be productive of advantage to the state, for gratitude alone would induce him to contribute liberally to the public service; whereas the guardians would of course pay nothing out of a fund, the existence of which they ignored.

Many gross falsehoods were asserted by Aphobus in his address to you. The first which I shall endeavour to expose, is one which it gave me the greatest pain to hear. He said that my grandfather was indebted to the state, and that on this account my father did not wish the property to be let, for fear of the risk it would run. Such is the pretence of the defendant; but observe, he has given no evidence that my grandfather died a state debtor, but only that he became a state debtor; and this he waited purposely till the last day to put in, and has reserved it for his second speech, hoping thus to make good the calumny. If he should read this evidence, attend, and you will find it deposed, not that my grandfather is a state debtor, but that he became one. I shall now proceed to refute this charge, on which he relies so much, and which I maintain to be false. Had I been in

time, and not thus artfully taken by surprise, I should have produced witnesses, to prove that the money was paid, and all accounts settled between my grandfather and the state; as it is, however, I can show by strong circumstantial evidence, that my grandfather was not indebted at the time of his decease, and that we incurred no risk in living openly on our property. In the first place, Demochares, whose wife is the sister of my mother and daughter of Gylon, has not concealed his property, but furnishes choristers, equips triremes, and performs other official services, without being in any alarm on that account. In the next place, my father himself disclosed his whole property, and more especially the four talents and a half, which the guardians, by their testimony against each other, confess to have been mentioned in the will and to have been received by themselves. Further, Aphobus himself revealed to the state the amount of assets, when he and his colleagues made me chairman of a board of tax-payers, and caused me to be assessed at so high a valuation as a fifth of my capital. Surely, if there were any truth in his present charge, he would have been more cautious than to act so. It appears then, from the absence of all concealment on the part of Demochares and my father and of the guardians themselves, that they apprehended no such risk as he says.[1]

[1] Æschines in the Oration against Ctesiphon (78) states of this Gylon, that he betrayed Nymphæum in the Tauric Chersonese to the enemy, that for this he was impeached, and, not daring to await his trial, fled from Athens, where sentence of death was passed on him. He then settled in the Tauric peninsula, and received an estate called the Gardens, as the reward of his treason, from the rulers of the country (meaning probably Satyrus, as to whom see Vol. iii. p. 13, note 3):—he there married a woman of large property, a native of the Crimea (whom Æschines calls a Scythian, though perhaps she was of Greek origin); by her he had two daughters, whom many years afterwards he sent with good fortunes to settle at Athens, and one of them (whose name was Cleobula) married Demosthenes, father of the orator.

Such is the statement of Æschines, which in its main facts may be taken as true, for they are not denied by Demosthenes. Only it is not improbable that the betrayal of Nymphæum may have been a more venial affair than Æschines represents it; having occurred at the close of the Peloponnesian war, when the place was no longer tenable by the Athenians, and, if not given up to Satyrus, would have fallen into the hands of the Spartans or of the Persian king.

It is most strange, saying as they do, that my father forbade them to let the property, they should never produce the will itself, which would have removed all doubt upon the subject, and, withholding so important a piece of evidence, they should expect you to believe them on their word. It was their duty, the moment after my father's death, to call in several witnesses and request them to seal the will, so that, in case of any dispute, the writing itself might have been referred to, and the whole truth ascertained. Instead of this, they thought proper to get certain other papers sealed, which were only memoranda and did not specify all the subjects of bequest; but the will itself, by virtue of which they became possessed of these same papers and all the rest of the effects, and were discharged from responsibility for not letting the estate, they neither sealed nor delivered up. Very likely you should believe anything they say about the matter!

I cannot indeed understand their account. My father (they say) did not allow them to grant a lease, or to disclose the assets—To me (do you mean) or to the state? It appears just the other way—you disclosed them to the state, and have made them invisible to me, not producing even the fund which was the basis of your return to the property tax. Tell me now, if you can, what was this fund? where did you deliver it to me, and in whose presence? Of the four talents and a half, you received the two talents and the eighty minas; so that they cannot be included in your

Of the debt here alluded to—whether it was connected or not with the political crime of Gylon; whether it was a fine for which the sentence of death was commuted; or in what other way it was incurred—we have no knowledge. It is next to certain however, that Gylon must have received a pardon from his countrymen (perhaps at the time of the general amnesty, after the expulsion of the Thirty Tyrants), and must also have discharged his debt to the state, before he ventured to send his daughters to reside at Athens. The arguments of Demosthenes are themselves of considerable weight, not to mention the silence of Æschines, who, though he would have been glad enough to reproach his rival with not being born a citizen, says not a word about this state debt, but only contends that he was by the mother's side a barbarian, and (as grandson of a person condemned for high treason) an hereditary enemy of Athens. It would have been impossible indeed for Demosthenes to have attained his political eminence, with such a liability hanging over him.

return, for at that time they belonged to you. Again, the house and the fourteen slaves and the thirty minas, which you delivered to me, could not have been assessed at so high a rate as that which you agreed to. It is therefore beyond all dispute, that there was property to a much larger amount, which is all in your possession; and now that you are clearly convicted of embezzling it, you invent these impudent excuses. Sometimes you refer to one another; sometimes you testify to one another's receipts; and, while contending that you have received but little, you render accounts of large outlays. You all acted together in the trusts, but now each has his separate plot. The will, from which we might have learned the whole truth, you have conjured away; and the stories you tell of each other are never the same.

Take the depositions and read them one by one to the jury. They will thus bear the evidence in mind, and come to a more correct decision.

[*The Depositions.*]

Such was the assessment to which these men consented on my behalf, being the same proportion in which estates of fifteen talents are assessed; notwithstanding which, the whole property which the three together have made over to me amounts not to seventy minas. Read the next.

[*The Depositions.*]

This portion, which the defendant is proved to have received, by the testimony of his colleagues and other persons to whom he confessed it, he has never returned, nor paid the alimony. Take and read the others.

[*The Depositions.*]

Two years did he conduct the business of the factory, and he has paid Therippides for the hire of his slaves, but to me, though he received the profits of two years, amounting to thirty minas, he has paid neither principal nor interest. Now read another deposition.

[*The Deposition.*]

These slaves the defendant took to himself, as well as the other things which were pawned to us with them; yet, though he has debited me with so much expended on their

maintenance, he has not allowed me an atom of profit upon them; and the men themselves he has conjured away, who brought in twelve clear minas every year. Read another.

[*The Deposition.*]

After having sold all this ivory and iron, he says there was none left, and thus defrauds me of the value of these articles, about a talent. Read these.

[*The Depositions.*]

These three talents and ten minas the defendant has in his hands, besides the other monies; that is to say, there are five talents of principal which he has received, which, together with interest (reckoning at twelve per cent. only), makes him liable on the whole for ten talents. Read the next.

[*The Depositions.*]

That these effects were mentioned in the will, and were received by the guardians, is proved by their testimony against each other. The defendant, though he admits that he was sent for by my father and went into the house, declares that he never entered my father's chamber or consented to any of the arrangements, but only heard Demophon read a document, and Therippides say that the testator had made such dispositions; and this he declares, when (in fact) he was the first that went in, and promised my father to execute his will in every point. For my father, men of the jury, when he felt that his disease was mortal, called together these three men, and in the presence of Demon his brother, whom he had requested to attend, placed us his children in their hands, calling us a sacred deposit. He then gave my sister to Demophon, with a portion of two talents, the interest to be enjoyed by him immediately, and betrothed her to him in marriage; me, with my property, he left to the care of all the three, charging them to let the estate, and use their joint efforts to preserve it for me. At the same time he bequeathed to Therippides the seventy minas, gave my mother to the defendant with a portion of eighty minas, and placed me upon his knees. These trusts, the very conditions upon which he took possession of my property, this most wicked of men has utterly disregarded; and now, after

uniting with his colleagues to strip me of everything, he will solicit your compassion. I say everything, because what all three have returned to me does not amount to seventy minas; and even of this sum he has since laid a plot to deprive me. For, when I was just bringing on my cause against them, they procured an exchange of estates to be tendered me; by accepting which (they thought) I should lose my right of action, for it would be transferred to my assignee; or else I should serve the office with scanty means, and be totally ruined. Thrasylochus of Anagyrus was the person who performed this piece of service for them. I, without considering the consequences, accepted the exchange, but refused to give possession, hoping to obtain a legal decision; but failing in this, and time pressing, rather than abandon the suit, I mortgaged my house and property and paid the public demand, being anxious to bring this cause to a hearing before you.[1]

[1] The difficulty of this passage arises chiefly from our imperfect knowledge of what took place upon a tender of the exchange under the Athenian law. It is certain, that upon a refusal to accept the state charge or its alternative, the exchange of properties, and probably upon an acceptance of the exchange, if there were any disagreement (which there was almost sure to be) as to the truth of the accounts rendered, or as to the properties which were to be transferred, the dissatisfied party might summon his opponent before the court, which in the case of the trierarchy was the court of the Generals. The court decided every dispute or question which arose. If the tender had been altogether refused, the jury considered whether it was a just tender, and, if they thought it was, the resisting party was compelled to choose between the two alternatives. The exchange being accepted, each of the parties was obliged to give to the other an inventory of his property, and, to prevent any concealment, power was given to each to enter and make search upon the house and land of his opponent, and to seal up every chamber, closet, barn, outhouse, or other place where his effects might be deposited. The court must have had authority to enforce its own orders, and to punish any act of oppression, violence, or fraud; though it is obvious that the whole scheme was fraught with inconvenience and opened a wide field for abuse.

What however we are more immediately concerned with is to inquire, how far, upon any dispute of this kind, the jury had power to look into the equities of the case between the parties, or into the general question of public advantage; or whether they were bound strictly by the balance sheets of assets exhibited on either side; and if so, whether only visible and realised property was to be taken into account, or whether debts, contracts, and uncertain contingencies were to be included. Thus, upon a question whether A or B ought to defray the

Have I not been deeply wronged from the beginning, and am I not still persecuted by them, because I seek to obtain redress? Is there one of you, who does not feel an honest

public charges, it might appear that the whole of A's property was embarked in a trade speculation, which might ultimately realise something considerable, but of whose present value it was almost impossible to make an estimate, while B had a much larger amount of ready money in his hands. Many similar examples might be suggested; but we may content ourselves with this of Demosthenes. Here are two men; one of whom (Thrasylochus) possesses (we will assume) five talents; the other (Demosthenes) has only one talent in his possession, but has a right of action by which he may possibly get thirty talents. But his chance of success depends almost entirely on matters personal to himself, such as, his own knowledge of the facts, his own exertions, stimulated by a sense of wrong and injustice, his eloquence and ability, his position and character, his claim to public sympathy as an injured orphan. All these advantages were incapable of being transferred to his assignee; and therefore it might well be, that an exchange of estates, by which Demosthenes took the five talents and Thrasylochus the one talent and the right of action, would be injurious to both parties, and consequently, in some degree, to the public also. Common sense therefore would lead us to infer, that the Athenian jury must have had power to look into questions of this sort, and in such cases as I have suggested either to dismiss the petition of the party tendering the exchange, or to make such special order with respect to the mode of effecting it, as the necessities of the case, and a due regard to what was fair and equitable, required. Assuming that this was the practice of the Athenian court, or that Demosthenes believed it to be such, we arrive at a not unreasonable explanation of this passage.

When Thrasylochus proffers him the trierarchy or the exchange, Demosthenes, not having ready money enough for the former, and knowing that his estate in possession was much less than that of Thrasylochus, accepts the exchange (ἀντέδωκε). "Very well;"—says Thrasylochus—"then the claim against the guardians is mine." "Oh, no"—replies Demosthenes—"you will only take my estate in possession: at all events, that will be decided upon the interpleader before the Generals." Thrasylochus, pretending that the property had become his immediately by the verbal acceptance of Demosthenes, began in conjunction with his brother Midias to take forcible possession and break open the doors of the inner apartment (see the Oration against Midias, Vol. iii. p. 91); upon which Demosthenes proceeds to turn him out (ἀπέκλεισε), intending to have it decided before the Generals (ὡς διαδικασίας τευξόμενος), whether his claim against the guardians would pass by the transfer, before he finally accepted the exchange, and hoping also that the jury would under the circumstances exonerate him altogether. Not however being able to get the interpleader brought on soon enough (οὐ τυχὼν ταύτης), for the cause against Aphobus came on in three or four days, he got alarmed, particularly when he found that Thrasylochus had given a release of the action to

indignation against the defendant and compassion for me; seeing that he, besides an estate of more than ten talents which he inherited, has got another of equal amount belonging to me, while I have not only lost my patrimony, but am by the villainy of these men deprived of the trifle which they have returned me? To what can I have recourse, should you come to any adverse decision? To the property mortgaged to creditors? It belongs to the mortgagees. To the surplus remaining after repayment? That will go to the defendant, if by your sentence I am decreed to pay a sixth part of the damages. I entreat you, men of the jury, do not entail upon us so heavy a calamity; do not allow my mother, myself, and my sister, to be reduced to unmerited misfortune. My father left us not with such prospects as these. His daughter he had betrothed to Demophon with a portion of two talents; his widow with a fortune of eighty minas was to have married this most cruel of men, the defendant; and me he intended to fill his own place as a contributor to the public service. Succour us then, succour us, for the sake of justice, for your own, for ours and our deceased father's sake. Save us, have mercy on us, since these our relations have shown no mercy. To you we are come for protection. I pray and beseech you, by your wives and children, by all the blessings you possess; as you hope to enjoy them, do not abandon me, do not cause my mother to be deprived of all her remaining hopes in life, or to suffer distress unbecoming her condition. Now, poor woman, she expects that I shall return home to her, restored by your verdict to my rights, and that my sister will not remain portionless; but should you decide against me (which heaven forbid), what think you will be her feelings, when she beholds me not only

the guardians; or perhaps he did not choose to be hampered with both these affairs at the same time; so he borrowed the money, and paid the trierarchal charge.

Reiske's version of ἀπέκλεισα δὲ ὡς διαδικασίας τευξόμενος, "excepi et reservavi mihi jus agendi in tutores," has been adopted by Platner, Att. Proc. ii. 19, and by Pabst, who translates—"ich liess mich zwar zu dem Vermögenstausch bereit finden, jedoch so, dass ich einen Vorbehalt machte wegen Ausschliessung der Forderung an die Vormünder vom Tausche, in der Hoffnung, ein rechtliches Erkenntniss darüber zu erlangen." Notwithstanding these high authorities, I cannot bring myself to think that the Greek words admit of such an interpretation; nor indeed do I think it agrees so well with the context or the facts.

stripped of my inheritance, but also deprived of my franchise, and my sister wholly destitute, without a chance of ever obtaining a suitable establishment? It would not be right, men of the jury, either to refuse me redress, or to allow Aphobus to retain his plunder. With regard to myself, though you have no actual experience of my disposition towards you, it is fair to presume that I shall not be worse than my father. Of my opponent you have some experience; and you well know that, though he has inherited a large fortune, he has not only shown no liberality to the public, but even grasps at the property of his neighbour. Bear in mind this, with the other facts of the case, and give your votes according to justice. You have the clearest evidence to guide you, the evidence of witnesses, circumstances, probabilities, these men's own acknowledgment that they took possession of my estate. They say they have spent it; a falsehood; for they have it still. But let this warn you to be careful of my interests; seeing that, if I recover my rights by your assistance, I shall naturally be grateful to you for restoring them, and glad to serve the public offices; whereas the defendant, if you let him keep what belongs to me, will do nothing of the kind; for don't suppose that he will choose to contribute in respect of property, which he denies having received: no; he will rather conceal it, to justify the verdict in his favour.

THE ORATION AGAINST APHOBUS—III.

THE ARGUMENT.

Previous to the trial of the last case, Aphobus had called upon Demosthenes to give up Milyas, the foreman who managed the sword-cutlery business, to be examined by torture. Demosthenes refused to give him up, on the ground that he had been emancipated from servitude by his father on his death-bed, and therefore it was not lawful to examine him by torture. Knowing that the refusal would be made a topic of observation against him on the trial, he called Phanus, Philip, and Æsius, the brother of Aphobus, to prove that Aphobus had, on being interrogated before the arbitrator, admitted Milyas to be a freeman. Aphobus brought actions against Phanus and Philip for having given this testimony, which he alleged to be false. The cause against Phanus seems to have been tried first, and Demosthenes appeared in his own person to defend him, as he had a right to do; for the action for false testimony was consi-

dered as a branch of the original cause, and might perhaps lead to a new trial. (See Vol. iii. Appendix IX. p. 394.)

Demosthenes in his speech shows by positive evidence that the testimony of Phanus was true; that Aphobus had made the statement in question, and that Milyas was in fact a freedman. He shows the improbability of the charge, insists upon the good character of Phanus, and the absence of any motive to speak falsely. Supposing even that his evidence has been untrue, Demosthenes contends that he would not be liable to the present action; for the evidence was not material, or not sufficiently material, to the issue in the original cause. Aphobus had not been damnified by it; for Milyas could not have proved anything to his advantage, if he had been examined. The verdict was given against Aphobus, not for what Phanus had deposed to, nor for lack of what Milyas could have proved, but on account of the strong and direct testimony which fixed him with the receipt of the trust funds, and the neglect to administer them properly and render a just account. None of the witnesses who gave that testimony had he dared to sue; that alone proved the present proceeding to be unfounded and vexatious. In fact it was a desperate attempt to re-open and re-argue a cause which had been decided against Aphobus on the most irresistible evidence. Demosthenes touches upon the leading features of the original cause, in order to show how little bearing the testimony of Phanus had upon the merits of the question, and with a view also to create an impression in his own favour in the minds of the jury.

If I had not remembered, men of the jury, that on a former trial between Aphobus and myself I convicted him easily of greater falsehoods than any which he has now uttered (so palpable were the wrongs he had done me), I should have no slight misgivings as to my own ability to expose the arts by which he misleads you. Now however, (with the favour of the Gods be it spoken), if you will only give me a fair and impartial hearing, I feel confident that you will form the same opinion of this man's impudence as the jury on the previous occasion. If indeed the case had required an artful speech, I should have distrusted my youth and shrunk from the contest: as it is, I shall simply have to lay before you a statement of the plaintiff's conduct towards us. From this you will have no difficulty in discovering which of us is the rogue.

I know that he has commenced these proceedings, not with any expectation that he shall convict a witness of giving false testimony against him, but in the belief that the large amount of damages, which he was condemned to pay, will excite a prejudice against me, and a feeling of compassion

for himself. On this account he now labours to clear himself of the charges made against him at the former trial, on the merits of which he had not a word to say in his defence at the time. I beg to observe, men of the jury, that, if I had proceeded to execute the judgment without showing him any indulgence, I should have done no wrong in levying the damages which you had awarded, though it might perhaps have been urged, that I had acted with excessive rigour in depriving a relation of all his property. The truth however is the reverse. The plaintiff has conspired with his fellow-guardians to strip me of my whole patrimony, and even now, after having been clearly convicted by a jury of his country, he does not choose to do anything which is fair and reasonable. He has dispersed the whole of his effects, giving the house to Æsius,[1] and the farm to Onetor, with whom I have been compelled to go to law; he took the furniture out of the house himself, carried away the slaves, broke the wine vat, tore off the doors, and all but set fire to the house; then he went off to Megara, where he has settled and paid the alien's tax. Surely you have more reason to execrate the plaintiff for such behaviour, than to charge me with any undue severity.

Of the rapacity and wickedness of this man I shall presently give you a full account, though indeed you have heard a pretty good summary of it already. But I shall now proceed at once to prove the truth of that piece of evidence, which is the subject of inquiry, and upon which you will have to pronounce your judgment. I have one request to make to you, men of the jury, and that is a reasonable one; that you will give to both of us a fair hearing. It is for your own advantage to do so as well as mine; for, the more accurately you are informed of the facts, the more just and righteous will be your decision. I shall show that the plaintiff has confessed Milyas to be a freeman, and proved the same by his conduct; that he has declined the most infallible test, the examination by torture, for fear the truth should

[1] I adopt the conjecture of Wolf, which seems to have occurred also to Reiske; and which is fortified by what follows about Æsius (p. 149, orig.). Æsius was the brother of Aphobus, and clearly a partisan in his cause. No one was more likely to have assisted him in making away with his property.

come out; that he is playing tricks, producing false witnesses, and misrepresenting the real facts of the case. All this I shall prove by such strong and cogent evidence, that you will all plainly see, that I am speaking the truth, and not a word the plaintiff has said is to be trusted. I shall commence with a statement of those particulars, which will best enable me to give you a clear insight into the case.

I commenced actions, men of the jury, against Demophon, Therippides, and the plaintiff, for breach of their trust as guardians, having been defrauded by them of all my property. On the trial of the cause against Aphobus, I proved clearly to the jury, as I shall prove to you, that he had conspired with his colleagues to deprive me of all the estate bequeathed to me. That I substantiated the charge not by means of false evidence, is manifest from this circumstance. A multitude of depositions having been read at the trial, some of the deponents stating that they delivered to the plaintiff certain of my effects, others that they were present when he received them, others again that they had made purchases from him and paid him the prices, not one of them has he sued for false testimony. The only witness against whom he has proceeded is this man, whose evidence he cannot show to have fixed him with the receipt of a single drachm. The amount of damages which I claimed was not computed from the defendant's deposition, in which there is no mention of money, but by casting up the sums deposed to by the other witnesses, whom Aphobus has not sued. It was upon hearing their statements, that the jury found a verdict against him for the whole amount demanded in the plaint. Why then did he pass them over, and sue the defendant alone? I will tell you. He well knew, that the witnesses who proved his receipt of money would only fix him with it the more strongly, as every item in the account was more closely investigated; which it would be on the trial for false testimony: for every charge, which occupied but a part of my former case in conjunction with other charges, would then be opened separately and form the subject of an entire speech. On the other hand, in suing a witness who deposed to his answer, he thought it would be in his own power to deny what he confessed before. Therefore he brings an action against the defendant, of the truth of whose testimony I shall endeavour

to convince you, not by a suggestion of probabilities, not by arguments concerted for the present occasion, but by reasoning which I am sure you will all think sound. Listen and judge for yourselves.

Being aware, men of the jury, that the whole contest at the trial would be about the deposition set out on the record,[1] and that you would have to judge of its truth or falsehood, I considered the first step to be taken was to challenge the plaintiff to a test. What is it I do? I offered to deliver to him, to be examined by torture, a young slave who had learned to read and write, who was present when Aphobus made the admission in question, and took down the very statement deposed to by the witness. This youth had not been ordered by me to play any tricks, to write down some of the plaintiff's words and suppress others; he was there simply to make a true report of every word the plaintiff spoke. Now I ask, could there be a fairer opportunity of convicting us of falsehood, than putting my slave to the rack? Aphobus declined this test, because he knew better than any man living that my witness had spoken the truth. There are plenty of persons who can speak to this challenge, for it has not been made in secret, but in the centre of the market place before many bystanders. Call the witnesses.

[*Witnesses.*]

The plaintiff is so cunning and determined to affect ignorance of what is right, that, although he has preferred a charge of false testimony, upon which you are sworn to give your verdict, he declined to question the slave as to the truth of the deposition (the point about which he ought to have been most anxious), and now falsely asserts that he requires him to be delivered up for a different purpose. Is it not monstrous, that he should complain of my refusal to deliver to him a freeman (for such I shall clearly prove Milyas to be); and should not consider my witnesses hardly treated, when I offer to him a person, who is confessedly a slave, and he refuses to put their evidence to the test by examining him? He surely cannot contend, that the torture is for

[1] A tablet hung up in court, containing a statement of the cause and issue to be tried; which thus may be compared to our nisi prius record, which is laid before the judge at the trial.

some purposes (which he desires) a certain criterion of the truth, and for other purposes uncertain.

Besides, men of the jury, this very fact was first deposed to by Æsius, the plaintiff's brother. He is now leagued with Aphobus and denies the fact, but at the trial he deposed to it with the other witnesses, not choosing to forswear himself or to incur the penalty which would immediately follow. Surely, if I had been getting up false evidence, I should not have put this man in my list of witnesses, seeing that Aphobus was his most intimate friend, and knowing that he meant to plead for him in the cause, and that he was an adversary of mine. It is absurd to suppose, that I should call as witness to a falsehood a person who was at variance with myself and brother of my opponent. I have many witnesses to speak to this point, and as many circumstantial proofs. In the first place, if he really never gave this testimony, he would have denied it, not now for the first time, but immediately upon its being read in court, when denial would better have served his purpose. In the next place, if I had without cause exposed him to a suit for giving false testimony against his brother, (a charge, on which men run the risk of degradation, besides pecuniary penalties,) he would not have let the matter rest, but would have brought an action against me for damage. Further, to sift the thing to the bottom, he would have demanded of me the slave who wrote the deposition, so that, if I had refused to give him up, I might have been deemed unworthy of credit. So far from his adopting any of these courses—when I, finding he denied having given the evidence, tendered him the slave to be questioned, he declined my offer; his brother and he being equally averse to try this point also by the torture. In support of each of these statements I shall produce witnesses, who will prove, that Æsius stood by the plaintiff in court when the deposition was read, that he appeared with the other deponents and assented to it, and that, when I tendered him my slave to be questioned on all these matters by Aphobus and himself, he did not choose to receive him. Call the witnesses up here.

[*Witnesses.*]

I am going to lay before you, men of the jury, a stronger proof than any which I have brought yet, of the plaintiff

having given this answer. When he asked for Milyas (notwithstanding the admission which I have proved), I thought I would expose the manœuvre, and what do you think I did? I summoned him to give evidence against Demon, his uncle, and a partner of his frauds. I wrote out the evidence of the witness whom he now sues for false testimony, and required him to depose thereto. At first he flatly refused; but when the arbitrator bade him depose or take the oath of denial, he deposed very reluctantly. Now, if the man was indeed a slave, and had not previously been admitted by Aphobus to be free, what could induce him to make this deposition? Why did he not at once deny, and get rid of the affair? As to this matter also I offered to let him examine the slave who wrote the deposition, who would know his own handwriting, and well remembered Aphobus deposing. I made the offer, not for lack of witnesses who were present, for there were some; but in order that he might not accuse these men of perjury, when confirmed by the result of the torture. Surely this ought not to prejudice you against these witnesses, who are a singular example of defendants whose case is made out by the plaintiff's own evidence. To prove the above statements, take the challenge and the deposition.[1]

[*The Challenge. The Deposition.*]

[1] Aphobus having persisted in demanding that Milyas should be given up to the question, notwithstanding the evidence which Demosthenes had put in, showing his opponent's admission of Milyas being a freeman, Demosthenes, to confirm and protect the witnesses who deposed to that admission, took the bold course of summoning Aphobus as a witness in his action against Demon, which had been sent for trial before an arbitrator. He wrote a deposition containing the substance of what Phanus and Philip had proved, which (being, as we may presume, relevant to the cause against Demon) he required Aphobus to depose to, or take the oath of disclaimer in the usual way. Aphobus, being afraid to incur liability as a false witness, deposed to it. His deposition to that effect is put in as evidence against him on the present trial; and it is proved by the production of a challenge which Demosthenes had given him to question the slave who wrote it out. "I gave this challenge," says Demosthenes, "not because I could not have proved the deposition by ordinary witnesses, but that I might deter Aphobus from bringing a charge for false testimony against Phanus and Philip (*ἵνα μὴ τούτους αἰτιῷτο τὰ ψευδῆ μαρτυρεῖν*), when they (Phanus and Philip) had their evidence confirmed by the questioning of the slave (*τὸ πιστὸν ἐκ τῆς βασάνου τούτοις ὑπάρχοι*). You must not condemn my

These are the tests which he has declined; all these circumstances prove the malice of his charge; and yet he calls upon you to believe his own witnesses, while he calumniates and impeaches the veracity of mine. Let me now say a few words on the probabilities of the case. I am sure you will all agree, that men who give false testimony are induced by one of three motives; either by a bribe to relieve their poverty, or by friendship, or by enmity to the adverse party. Not one of these motives can apply to my witnesses. Not friendship certainly; as they are not men of the same pursuits or the same age with me, or even with each other. Not enmity to the plaintiff; for one of them was his brother and pleaded for him; Phanus was his friend and belonged to the same tribe; Philip was neither friend nor foe: so it is clear this motive cannot be alleged against them. Nor was it poverty; for they are all men of large fortunes, out of which they defray the charges of public offices, and cheerfully perform the duties imposed on them. Besides, you know something of them, and what you know is to their credit, as respectable persons. This being so; the men being neither poor, nor friends of mine, nor enemies of my opponent; what grounds are there to suspect them of giving false evidence? I myself cannot imagine any.

witnesses, Phanus and Philip, on this account (καταγνῶναι τῶν μαρτύρων διὰ τοῦτο), *i.e.* because I took the course of giving the challenge, instead of proving the deposition of Aphobus by the evidence of witnesses who were present: for the torture of the slave would have been the most infallible test of the truth, and Aphobus has declined it.

This passage appears to be somewhat obscure, and Reiske confesses that he does not understand it. We must bear in mind however, in this as in other cases, that we have not the whole history of the trial before us: we have a speech for the defence, without that of the plaintiff. Perhaps Aphobus had commented upon the fact, that on the former trial, as on the present, the evidence of Phanus was not confirmed by the testimony of witnesses present before the arbitrator: to which Demosthenes replies in effect—"There is nothing in that; for when Aphobus declined the challenge, I considered the fact as incontestably proved."

I prefer the reading of πρόκλησιν to πρόσκλησιν. The challenge at all events is put in, verified by the testimony of the arbitrator or some other witness.

Philip and Phanus are both referred to under the terms τούτους, τούτοις, because, though the present trial was that of Phanus only, yet Philip's case was virtually on its trial, and he was doubtless in court and anxiously waiting the event.

The plaintiff knew all this, and had the best reasons for being satisfied of the truth of their testimony; notwithstanding which, he brings an unfounded charge against them, and not only denies that he ever made the statement, which I prove him to have made beyond the possibility of a doubt, but contends also that Milyas is really a slave. In a very few words I will prove the falsehood of this assertion. Upon this very point, men of the jury, I offered to let him question my female domestics, who remember that Milyas was emancipated by my father on his deathbed. Besides, my mother was willing to make oath, in the presence of my sister and myself, and with imprecations on us if she spoke falsely, that my father in his last moments discharged this man from servitude, and that he was treated by the family as a freeman.[1] We were her only children, for whose sake she determined to remain a widow; and I trust none of you will imagine, that she would thus have called down the vengeance of heaven upon our heads, if she had not been certain she should swear to the truth. I have evidence that we made these proposals, and were ready to abide by them. Call the witnesses.

[*Witnesses.*]

You see how many strong points I have to urge, and how ready I have been to submit the matters in dispute to the most infallible ordeal. Aphobus declines to meet me on these grounds, but imagines that he shall induce you to convict the defendant, by slandering me and impeaching the result of the late trial. Of all manœuvres I ever heard of, this is the most unfair and insidious. He, with the assistance of his brother-in-law Onetor and Timocrates, has suborned persons to give false evidence on that subject; we, not foreseeing that he would adopt such a course, and supposing that the whole contest would be as to the truth or falsehood of the deposition itself, are not prepared with witnesses to speak to the guardianship accounts. However, notwithstanding this artifice, I think I shall be able, by a simple narration of the facts, to convince you that the verdict was a most righteous one; that it was given against Aphobus, not because I prevented him from putting Milyas to the torture,

[1] As to the nature of this oath, see Vol. iii. Appendix IX. p. 383.

nor because he admitted him to be a freeman (as these witnesses have testified), but because he was shown to have received large sums of money for which he was accountable to me, and because he did not let the estate in the manner required by the laws and directed by my father's will, as I will show you clearly. These were things that everybody could see, the laws I mean, and the sums of which the guardians had plundered me; but as to Milyas, no one knew even who he was. You will see by the charges in the plaint, that it is as I say. For when I brought my action, men of the jury, against Aphobus, for the fraudulent account which he had rendered me, I did not lay the damages in one general sum, as a man would do who made a vexatious demand, but specified the several items which I charged him with, stating the sources from which, and the persons from whom he received them, and also the amount of each. I make no mention of Milyas as being acquainted with any of these particulars. The plaint commences thus: "Demosthenes makes this complaint against Aphobus. Aphobus is indebted to me for monies had and received by him as guardian, (that is to say,) eighty minas which he received as the marriage portion of my mother, in pursuance of my father's will."—This is the first item, of which I aver myself to be defrauded. Now what is the evidence of the witnesses? "That they were present before the arbitrator Notharchus, when Aphobus admitted Milyas to have had his freedom given him by the father of Demosthenes." Consider for a moment. Do you think you could find any orator, sophist, or conjuror, with such wonderful cleverness or power of eloquence, as to be able from this deposition to convince a single human being, that his mother's fortune is in the hands of Aphobus? What, in the name of heaven, could he say?—"You confess Milyas to be a freeman?"—"Well, but how does this show the fund to be in my possession?"—You must see it would be no proof at all. How then was the fact proved? First, by the evidence of his colleague Therippides, who declared that he paid over the money to him. Secondly, Demon his uncle and all the witnesses who were present stated, that he agreed to pay alimony to my mother, whose portion was in his hands. Against these men he has taken no proceedings; clearly

because he knew their statements to be correct. Besides, my mother offered to make oath, in the presence of me and my sister, and with imprecations on our heads if she spoke falsely, that Aphobus received her portion according to my father's will. Are we then, or are we not to say, that he is liable for these eighty minas? And was it by this or that person's evidence, that the verdict against him was obtained? I think, it was by the evidence of truth. He has enjoyed the interest of this fund for ten years, and even after judgment cannot make up his mind to restore it; yet he asserts that he has been hardly used, and that he lost the cause by these witnesses, not one of whom uttered a word to fix him with the receipt of the marriage portion.

As to the bottomry loan, the sofa-manufacturers, the iron and ivory that were left me, and my sister's portion, at the plunder of which this man connived, that he might himself be allowed to take what he pleased of my effects—attend and observe, how just was the verdict pronounced against him, and how useless it would have been to examine Milyas on any of these points.

For the fraud which you connived at, Aphobus, there is an express law which makes you responsible, in like manner as if you had yourself reaped the fruits of it. What has this law to do with the questioning of the slave? In the affair of the bottomry loan, you all leagued with Xuthus, and divided the money amongst you, and cancelled the agreement; and now, having arranged everything to suit your own purposes, and destroyed the documentary evidence, (as you are proved to have done by Demon,) you endeavour by artful impostures to mislead the jury. With respect to the sofa-makers; if you have obtained money and made large profits for yourself by lending on my securities, when you should rather have prevented others from doing so, and at last have made away with them altogether; how can your witnesses help you? These men, at all events, did not prove, that you admitted having lent money upon my slaves, and having appropriated them to yourself. The fact was proved by the acknowledgment in your own account, and confirmed by other testimony.

As to the ivory and iron; I say, all my domestics well know, that Aphobus used to sell these articles; and I am

willing, as I was on the former occasion, to deliver to him any one of them he chooses, to be examined by the torture. Should he allege, that I refuse to give up a man who knows something of the case, and tender him persons who can prove nothing, he will have made out a stronger reason for accepting my offer. For if the persons, whom I tendered as competent to speak to the fact, had said that none of the stock was in his possession, of course he would have been acquitted of the charge. However, the fact is not so. He would certainly have been convicted of selling the stock and having received the proceeds. Therefore it was, that he rejected persons who were on all hands admitted to be slaves, and desired to examine a freeman by the torture, whom it would have been a crime in me to give up; his object being, not to bring to a test the matters in dispute, but that, in case his demand were not complied with, he might found upon it the semblance of an argument. To make you understand all these points—first about the portion—then the connivance—then the rest—he shall read you the laws and the depositions.

[*The Laws. The Depositions.*]

That Aphobus has been in no way prejudiced by my refusal to give up this person to the torture, you may infer not only from the preceding observations, but from the nature of the case itself. For let us suppose that Milyas was racked on the wheel. What would he most desire him to say? Would it not be this, "that he is not aware of the plaintiff having any part of the property in his hands?" Well; suppose he says so. Does it follow that he has none? Far from it; for I produced witnesses, who spoke to the affirmative from their own knowledge and eyesight. That some man knows something to be in his possession, is material evidence; but that some one does not know it, is no evidence at all: there might be plenty of witnesses of that sort.

Among all these witnesses who appeared against you, tell me, Aphobus, which have you sued for false testimony? You cannot mention one. What becomes then of your assertion, that you have been hardly used and lost the verdict unjustly because this person was not given up to you? Do you not yourself prove its falsehood when, it appears, you made no

charge against witnesses, who proved your receipt and possession of that property, as to which you desired to question Milyas, to show that it was never left? They were the persons against whom (if you were really injured) you ought to have proceeded; but you have sustained no injury, and your present charge is vexatious and malicious.

The roguery of the plaintiff may be seen in many points of view; but most clearly, by observing his conduct in regard to the will. My father's will, men of the jury, contained a specification of everything he left, and a direction to the guardians to let the estate. For this reason Aphobus never gave it up to me, lest I should learn from it the amount of the property. He admitted to be in his possession only what (on account of its publicity) he could not deny. The will (according to him) contained these provisions—that Demophon should immediately receive two talents as a portion with my sister, whom he was to marry when she arrived at a proper age, (that would be in ten years;) he himself was to have eighty minas with my mother, and the house to dwell in; Therippides was to enjoy the interest of seventy minas until my majority: the residue which was left to me, and the clause for letting the estate, these he entirely suppressed; for it did not suit him to reveal these matters to you. However, when Aphobus himself allowed, that my father on his death-bed gave such large sums of money to each of the guardians, the jury, who sat on the former trial, considered this admission to be evidence of the value of the property. For, when a man had charged his estate with the payment of four talents and a half in the shape of marriage portion or legacy, it was plain that he took this from a residue (bequeathed to me) of more than double the amount. It could not be supposed, that he would desire to leave me his son in poverty, and to heap riches upon these men who were rich enough already. No. It was because of the magnitude of my inheritance, that he gave to Therippides the seventy minas, and to Demophon the interest of the two talents before the period of his marriage with my sister. That inheritance, or that with a small deduction, he was never shown to have delivered up to me. Some part of it he declared he had spent, some he had never received, some he knew nothing about, some was in the hands of this or that individual;

some was in the house; in short, he had all sorts of accounts to give, except the time and mode of payment.

As to the story of the money being left in the house; this I will clearly show to have been fabricated by him. The insinuation was artfully made. He saw, as you do, that the property was large; and he could not show that he had delivered it up to me. He sought therefore to make out a plausible case against me, as if I were attempting to recover what was already in my hands. But this is quite clear, that, if my father had felt no confidence in these men, he would not have made them trustees at all, and then (supposing he had left money in this way) he would not have mentioned it to them. How then do they know of its existence? On the other hand, if he believed them trustworthy, surely he would not have placed the bulk of his property under their control, and kept the remainder out of it. Again, he would never have left this fund in the custody of my mother, and yet given her in marriage to Aphobus, one of the guardians; for it is absurd to suppose, that he would endeavour to secure the treasure by her agency, and yet put her as well as the money in the power of one of the persons whom he distrusted. Further, had there been any truth in this story, do you imagine that Aphobus would not have made my mother his wife, in pursuance of my father's will? He took her portion of eighty minas, apparently with an intention of marrying her; but afterwards he made a mercenary match with the daughter of Philonidas of Melita, that he might get another eighty minas from him, in addition to what he had obtained from our family. But had there been four talents in the house, and in her keeping too, (as he represents,) don't you think he would have flown to get both her and them into his possession? Or is it likely that, after so shamefully conspiring with his colleagues to rob me of my visible property, which many of you knew to have been left me, he would miss the opportunity of seizing a fund, which you would know nothing about? Who could believe such a tale? It is impossible, men of the jury; it is impossible. From that hour indeed was my father's property buried, when it came into the hands of these men; and Aphobus, who cannot prove that he has paid me any of it, seeks by this account to represent me as a rich man, and so to deprive me of your sympathy.

Many other charges might I bring against him; but I should not be justified in speaking of my own wrongs, while the witness is in peril of disfranchisement. I will now read you a challenge; from which you will see, that the statements in the deposition were true; that Aphobus, who now says he required to examine Milyas upon all the items in dispute, at first demanded him only on a question of thirty minas; and also that he is not in the least damnified by the evidence. Being anxious to prove him every way in the wrong, and to bring his tricks and artifices in a clear light before you, I asked him, what was the sum, in respect of which, as being within the knowledge of Milyas, he desired to examine him; to this he falsely replied, that it was the whole amount. "Well then," said I, "upon this point you shall question the slave who has the copy of your challenge: and if, after I have sworn that you confessed the man to be free and testified to the same effect against Demon, you will swear to the contrary with imprecations upon your daughter, I release to you the whole sum, in respect of which it shall appear from the examination of the slave that you made your first demand for Milyas; and by that amount I am content that the damages awarded against you shall be reduced, so that you may sustain no injury by the witnesses." This challenge, which many persons saw given, he would not accept. Can you then, who are upon your oaths, conscientiously convict my witnesses at the instance of a man, who refused to give this judgment in his own favour? Can you do otherwise than look upon him as the most impudent of mankind? To prove the truth of my statements, call the witnesses.

[*Witnesses*]

Do not suppose that, while I was prepared to take this course, the witnesses were of a different mind. They proposed, in confirmation of their testimony, to take a solemn oath in the presence of their children, and with imprecations on them if they swore falsely. Aphobus did not choose to let the oath be sworn either by them or by me. He rests his case upon an artful speech and witnesses accustomed to perjury; and by their aid thinks he shall easily impose on you. Take and read this deposition to the jury.

[*The Deposition.*]

Is it possible to prove, in a clearer manner than I have done, the malice of this charge, the truth of the evidence against my opponent, and the justice of the verdict which condemned him? I have shown, that he refused to examine, as to the truth of the deposition, the very slave who wrote it down; that his brother Æsius deposed to the very statement which he declares to be false; that Aphobus himself, when called by me as a witness against Demon, his uncle and co-trustee,[1] gave the same testimony as the witnesses whom he sues; that he declined to examine my female servants as to the fact of Milyas being a freeman; that my mother was willing to make oath on the subject, with imprecations on her children; that I tendered for examination all the rest of my servants, who knew every circumstance of the case better than Milyas, and he rejected them all; that he has not sued for false testimony a single one of the witnesses who fixed him with the receipt of money; that he did not produce the will or let the estate, as the laws require; and lastly, that when, by swearing a solemn oath after myself and the witnesses, he might have procured a release to the extent of the sum as to which he required Milyas to be questioned, he did not think proper to swear it. I declare to heaven, I could not devise a surer method of proving my case, than the one I have adopted. And yet Aphobus, clear as it is that he calumniates the witnesses, and sustained no damage by their evidence, and lost the verdict justly, still puts a bold face on the matter. There would be less reason to wonder at the style of his present language, if he had not been condemned in the first instance by his own friends and by the arbitrator. For you must know that, after inducing me to refer the case to Archenaus and Dracontides and Phanus, (the last of whom is defendant in this action,) he revoked their authority, because he heard them say that, if they decided on oath, they should give their award against him; then he went before the official arbitrator, by whom, as he could make no answer to my claim, judgment was pronounced for me. From this he appealed to a jury; who, upon hearing the case, affirmed the decision of his friends and the arbitrator, and assessed the

[1] He was not strictly a trustee, but, being the father of Demophon, he very likely took a part in the management of the trust, and therefore Demosthenes calls him so.

damages at ten talents. They gave their judgment, not on the ground that he had admitted Milyas to be a freeman, (for this was of no importance;) but because, an estate of fifteen talents having been left to me, he would not grant a lease of it; and because he and his colleagues managed it for ten years, and he allowed me (then a child) to be assessed to the property tax at one-fifth of the whole value, the same rate at which Timotheus the son of Conon and men of the largest fortunes were assessed; and, after so long managing a property, which he chose to be so highly rated, he delivered to me, as the balance due from himself, not so much as the value of twenty minas, and united with his colleagues to plunder me of my whole substance, the capital as well as the income. For these reasons the jury, allowing interest on the whole amount, not at the rate at which estates are usually let, but at the lowest rate they could, found the loss which I had sustained by the fraud of the guardians to exceed thirty talents altogether; and therefore they assessed the damages against this man at ten talents.

THE ORATION AGAINST ONETOR—I.

THE ARGUMENT.

Aphobus, after the judgment obtained against him by Demosthenes, made away with almost all of his movable goods, so as to leave little or nothing that could be seized in execution. Demosthenes, proceeding to take possession of a house and a piece of land, encounters the opposition of Onetor, the brother-in-law of Aphobus, who pretends that the land had been mortgaged to him, to secure a sum of money given with his sister as a marriage portion. This money (as he alleges) had become repayable, Aphobus and his wife having separated. The plaintiff, having made entry upon the land in assertion of his right, is turned off by Onetor, against whom he commences an action of ejectment.

The question to be determined in this action is, whether the title of Onetor is a good one. Demosthenes contends that the mortgage is colourable and fictitious; that the marriage portion had never been paid to Aphobus; that his wife had never really been divorced; and that, in fact, the whole scheme had been concocted between Aphobus and Onetor, in order to defeat his execution. To support this charge of fraud, he produces some direct testimony, but relies mainly upon the circumstances and probabilities of the case, and upon admissions and acts of his opponents, inconsistent with their present claim

As to the law connected with this case, the reader is referred to Appendix IV.

I WAS most anxious, men of the jury, to avoid my dispute with Aphobus, and also this in which I am engaged with the defendant Onetor, his brother-in-law. I therefore made many fair proposals to both of them; but nothing like reasonable terms could I obtain from either. Indeed I have found this man far more troublesome and more deserving of punishment than the other. I pressed Aphobus (though in vain) to let our disputes be settled among friends, and not to try the experiment of a jury. But this man, when I offered to let him decide his own cause, to avoid the risk of a trial, treated me with the utmost contempt, refused to hold any conversation with me, and in a very insulting manner turned me off the land, which belonged to Aphobus when I recovered judgment against him. Now then, since he unites with his brother-in-law to deprive me of my property, and has come into court relying on the influence of his friends, the only course left for me is, to seek redress at your hands. I am aware, men of the jury, that I have to contend against ingenious pleading and witnesses prepared to give false evidence. I think however, the justice of my cause will give me such advantage in argument over the defendant, that, if any of you had a good opinion of him before, you will learn from his conduct towards me, that he has all along been (unknown to you) the vilest and basest of mankind. I will show you, that he has not only never paid the marriage portion, for which he says the estate is mortgaged, but has laid a plot from the very beginning to defraud me; and also that the lady, on whose behalf he ejected me from this land, has not been divorced; and that he is now screening Aphobus, and defending this action with a view to defeat my lawful claims. All this I shall prove by such clear and strong evidence, that you will at once see the justice and propriety of the action which I have brought against him. I shall commence with that part of the case, which will best give you an insight into the whole.

It was known, men of the jury, to many of the Athenians, and it did not escape the observation of the defendant, that my guardians were grossly neglecting their duty. The discovery was indeed made very early; numerous meetings and discussions were held on the subject of my affairs, before the Archon as well as other persons. For the value of the property left me was notorious, and it was pretty evident, that

the trustees were leaving it unlet, for the purpose of enjoying the income themselves. This being so, there was not a single man acquainted with the circumstances, who did not expect that I should recover compensation from them, as soon as I came to man's estate. Among others who continued to hold this opinion, were Timocrates and Onetor; of which I can give you the strongest proof. The defendant, seeing that Aphobus, besides his own patrimony, held mine also (not a small one) in his possession, was desirous of giving him his sister in marriage; but he was too wary to part with her portion; for he looked on the estate of a guardian as a sort of security for the ward. Accordingly he gave him his sister, but the portion it was arranged should remain in the hands of Timocrates, her former husband, who was to pay interest thereon at ten per cent. so long as he retained it. Afterwards, when I had obtained judgment in the suit against Aphobus for breach of trust, and he still refused to make me any satisfaction, Onetor, far from endeavouring to bring us to terms, pretended that his sister had been divorced, and that he had paid her portion and could not get it back, (although at that very moment it was unpaid and at his own disposal,) and then, saying he had taken a mortgage of the land, was hardy enough to expel me from it. Such contempt did he feel for me, and for you, and for the laws of his country. This, men of the jury, is the ground of the present action, and these are the facts upon which you will have to pronounce your verdict. I will first call before you Timocrates himself, who will state, that he agreed to remain a debtor for the lady's portion, and continued to pay interest upon it to Aphobus according to the agreement; then I will call witnesses to prove, that Aphobus himself confessed he received the interest from Timocrates. Take the depositions.

[*The Depositions.*]

It is admitted, you see, that the portion was not actually paid to Aphobus in the first instance. And it is highly probable that, for the very reasons I have mentioned, they chose to defer the payment, rather than mix it up with the estate of Aphobus, over which so serious a liability impended. They cannot say it was poverty that prevented their making an immediate transfer; for Timocrates has an estate of more than ten

talents, and Onetor above thirty; this then could not have been the cause. Nor can they allege, that they had valuable property, but no ready money; or that the lady was a widow, and therefore they hurried on the marriage without paying her portion at once. For, in the first place, these men lend a great deal of money to other people; and secondly, the lady was not a widow, but was living with Timocrates, and removed from his house, when they gave her away to Aphobus; so that this excuse cannot be admitted any more than the others. And I think, men of the jury, you will all agree upon this point; that any man, contracting such an alliance, would rather borrow of another, than not pay his sister's portion to her husband. For, in the latter case, he is esteemed as a debtor who is not certain to perform his engagements; whereas, if he gives away the lady and her money together, he becomes indeed a brother-in-law and a friend; he has then acted an honourable part, and is not looked upon with mistrust. This being so, as they were not compelled by any of the causes just mentioned, and could not have desired, to leave this debt outstanding, it is impossible to suggest any other excuse for the nonpayment; it must have been, that they would not trust Aphobus with the money for the reason that I say.

These points I establish beyond all dispute. And I think I shall easily show from the facts themselves, that they never paid in the sequel; and you will see that, even if they retained the money not with the view that I suggest, but with the intention of speedy payment, they would never actually have paid or parted with it; so urgent were the necessities of the case.

Two years elapsed between the marriage and their declaration of the divorce. The marriage took place in the archonship of Polyzelus, in the month of Scirophorion; the divorce was registered in the month of Poseidon, in the archonship of Timocrates. Immediately after the marriage I came to man's estate, made my complaint, and demanded an account; and, finding myself plundered of all my property, I commenced my action in the last mentioned year. Now, that in this short interval the debt continued according to the terms agreed on, is not unlikely; but, that it was paid, is incredible. Do you think that a man, who originally preferred to remain

in debt and to pay interest for his sister's fortune, in order that it might not be risked with the husband's property, would have paid it over when the suit against the husband had begun? Surely, men of the jury, you cannot suppose it possible. Why, even if he had trusted him with the money in the first instance, he would have sought to recover it then.

To prove that the lady married at the time I mention, that the dispute between Aphobus and myself had commenced in the interval, and that, after I had brought my action, these men registered the divorce with the Archon; take these depositions as to each particular:

[*The Depositions.*]

After this archon comes Cephisodorus; then Chion. During their years (being of full age) I continued to press my claim; and I commenced my action in the archonship of Timocrates. Take this deposition.

[*The Deposition.*]

Now read this.

[*The Deposition.*]

It is thus clear from the evidence, they have taken these bold measures, never having paid the portion, for the purpose of preserving to Aphobus his estate. For when in so short a period of time they say they owed the money, they paid it, they could not get it back, the lady separated from her husband, and they became mortgagees of the land; how can one avoid seeing, that they are acting in collusion, to deprive me of the fruits of your verdict? I now proceed to show you from the answers of the defendant himself, and also from those of Timocrates and Aphobus, that it is impossible for the portion to have been paid.

I put questions, men of the jury, to each of these men before many witnesses. I asked Onetor and Timocrates, if any persons were present when they paid the marriage portion; Aphobus I asked, whether any were present when he received it. They severally answered, that no witness was present, but that Aphobus got it by instalments in such sums as he desired from time to time. Now can any one of you believe, (the portion being a talent,) that Onetor and Timocrates put so large a sum into the hands of Aphobus without witnesses? Aphobus! in paying whom—I won't say in this

manner, but even in presence of a multitude—one would take every precaution, so as (in case of dispute) to be able to recover one's rights before you. In a transaction of such importance no man would have taken steps without a witness, whomsoever he had to deal with, much less with such a person as Aphobus. It is for this reason we hold marriage feasts, and invite our most intimate friends; because the affair is one of moment; we are giving to the charge of others the happiness of our sisters and daughters, for whom we are most anxious to make safe provision. It stands to reason therefore, that, if the defendant really paid over the portion to Aphobus, he settled with him in the presence of the same persons, before whom he agreed to become a debtor and pay interest. For, by so doing, he was discharged from the whole demand; whereas, by paying him when no one was by, he left the persons, who witnessed the agreement, to be witnesses against him of the continuance of the debt. The matter stood thus. They could not persuade their friends (more honest than themselves) to swear to their having paid the money. They thought, if they produced other witnesses (not relations), you would disbelieve them. They knew again, if they said the payment was made all at once, we should demand for examination the slaves who brought the money; and in that case, if they declined to give them up, (as they certainly would if the payment was never made,) their fraud would have been detected. On the other hand, by saying they paid without a witness, and by instalments, they hoped to escape detection. Thus were they reduced to invent the present story. And by such tricks and artifices they imagine that, passing for simple-hearted persons, they can easily deceive you; the truth being, that in matters affecting their interest, (so far from simplicity,) they would not do the most trifling act without all the caution of men of business. Take and read the depositions of the persons, before whom they gave their answers.

[*The Depositions.*]

Now, men of the jury, I will show to you, that the lady, though nominally separated, was really living with Aphobus. I think, if you are satisfied of this, you will feel more inclined to withdraw your confidence from my opponents, and to re-

dress my wrongs. Some of the facts I shall establish by direct testimony, others by circumstantial evidence of a convincing nature.

When I saw, men of the jury, that after the registration before the Archon of this lady's divorce, and after Onetor had declared the farm to be mortgaged for her portion, Aphobus still occupied and cultivated the land, and dwelt with his wife, I was sure it was all a pretence to cover the real design. Wishing to satisfy you of this, I thought it right to convict him in the presence of witnesses, in case he denied the facts to be as I have stated. Accordingly I tendered him for the torture a slave, who was well acquainted with the circumstances; one who had belonged to Aphobus, and whom, Aphobus being in default,[1] I had taken in execution. The defendant, as to his sister's living with Aphobus, declined the inquiry which I proposed; the other matter (Aphobus farming the land) was too notorious to be denied, so he confessed it.

But there is further proof that Aphobus lived with his wife, and held the land, until just before the commencement of the action. It appears from the manner in which he dealt with the land after judgment. For, as though he had never mortgaged, and the property would belong to me as judgment creditor, he carried off every thing he could, all the produce and agricultural implements, except the casks; what he was unable to remove, he left behind of course; so that Onetor was at liberty to claim the bare land. Here's a pretty contrivance! One says the farm was mortgaged to him, though the mortgagor was seen cultivating it; and pretends that his sister has been separated from her husband, when he is proved to have declined the test of inquiry upon this very point. The other, not living with his wife, (as the defendant says,) carries away all the produce and implements from the farm, while the guardian of the divorced lady, to secure whom he says the land is mortgaged, shows no resent-

[1] If the judgment debtor did not pay by the appointed day, he was said to be *ὑπερήμερος*, and the adversary might himself levy execution. See Vol. iii. Appendix IX. p. 391. And see the fourth Appendix in this volume.

κατὰ τὴν ὑπερημερίαν is rendered by Pabst—"wegen der nicht eingehaltenen Zahlungstermine."

ment at any part of his conduct, but takes it all quietly. Is it not palpable what this means? Is it not avowedly a plot to screen Aphobus?[1] You must think so, if you fairly consider the facts. I will prove every point—the defendant's confession that Aphobus farmed the land before I commenced the action against him—his refusal to inquire by the torture into the fact of his sister's cohabitation—and the removal, after judgment, of all the agricultural stock except what was fixed to the soil. Take and read these depositions.

[*The Depositions.*]

I have all these proofs that the divorce was not a real one. But the best proof of all is the conduct of Onetor himself. He who should have been highly indignant, when, after paying (as he says) the portion, he got back (instead of money) a farm with a disputed title; this very man—as though he had no quarrel; as though he had sustained no injury; as though he were on the most friendly terms with Aphobus—pleaded his cause in the action which I brought against him. Me, who had done him no wrong whatever, he used every effort, in conjunction with Aphobus, to deprive of my inheritance; Aphobus, whom (if any part of their present story is true) he should have looked upon as a stranger, he sought to secure in the possession of my property as well as his own. Nor did he confine his services to the trial; but, after judgment had been given against Aphobus, he went up to the jury and supplicated them on his behalf, begging and praying them, with tears in his eyes, to assess the damages at a talent only; and for this he offered to be bail himself. These facts will hardly be disputed; the jury who then sat on the bench and many of the bystanders remember them; however I will produce witnesses. Here, take this deposition.

[*The Deposition.*]

There is another strong circumstance, men of the jury, from which you must see that Aphobus really lived with his wife, and even to this day has not separated from her. The lady, before her union with him, did not remain a day single,

[1] *προστασία,* according to the grammarians, signifies an attempt to screen or protect a wrong-doer. Reiske interprets it—"collusio—Beeinträchtigung." Auger—"collusion." Pabst—"offenbare Vertretung des Aphobus."

but left a living husband (Timocrates) to come to him; and now, in a period of three years, she does not appear to have married any other man. Who can believe, that on the former occasion she went straight from one man to another, to avoid living single, and that now, (if she is really divorced,) she would have endured to remain single for so long time, when it was in her power to get a new husband, her brother possessing so large a fortune, and she herself being so young? There is nothing probable about it, men of the jury. It is mere fable. The lady is living with her husband openly, and makes no secret of it. I will produce the evidence of Pasiphon, who attended her in her illness, and saw Aphobus sitting by her side, in this very year, after the commencement of this action against the defendant. Take the deposition of Pasiphon.

[*The Deposition.*]

Knowing, men of the jury, that Onetor, immediately after the termination of the suit, had received the effects out of the house of Aphobus, and got possession of all his property as well as mine; and being assured that Aphobus and his wife were living together; I demanded three female slaves, who knew of the husband and wife living together, and of the effects being in these men's hands, that we might have not words only upon the subject, but proof by the torture. Onetor, on my challenging him to this, which all who were present declared was a fair proposal, dared not have recourse to so sure a test; but—as if there were some better kind of proof in such matters than torture and testimony—he would neither produce witnesses to show that he had paid the marriage gift, nor surrender the domestics, who knew whether his sister lived with her husband, to be questioned upon the fact; and, because I requested him to do so, he most contemptuously and insultingly desired me not to talk to him. Was ever man so unfeeling, or so determined to affect ignorance of what is right? Take the challenge itself and read it.

[*The Challenge.*]

You, men of the jury, hold it as a maxim, both in public and private, that of all methods of inquiry the torture is the most certain; and when slaves and freemen are both at hand,

and a fact has to be discovered, you do not use the testimony of the freemen, but question the slaves, and thus endeavour to ascertain the real truth. And very properly. For there have been witnesses ere now, who were thought not to have spoken the truth; but no slave was ever convicted of giving false evidence upon examination by torture. Yet the defendant, after declining so fair an offer, after rejecting so sure and decisive a test, calling Aphobus and Timocrates, one to say he paid the portion, the other that he received it, will ask you to believe him, when he pretends that his business with these men was transacted without a witness. Such simpletons does he take you for. That their tale will be neither true nor like the truth—by their confessing not to have paid the portion at first—by their pretending to have paid it back without witnesses—by the dates, which make it impossible to have paid that money after the title to the property was in dispute[1]—by these and all the other circumstances of the case, I think I have clearly proved.

THE ORATION AGAINST ONETOR—II.

THE ARGUMENT.

Demosthenes gives additional proof of his opponent's fraud, and replies to some parts of his defence.

One circumstance which I omitted in my former speech, and which is as strong as any that were urged, to prove the non-payment of the marriage portion by these men to Aphobus, I will lay before you; and then I will proceed to expose the falsehoods which you have heard from the defendant. You must know, men of the jury, when he first thought of putting in a claim to the property of Aphobus, he said he had paid, not a talent, (which he now says was the amount of the portion,) but eighty minas; and he set up

[1] My version of this clause is very similar to that of Pabst—"theils aus den Zeitverhältnissen, welche offenbar die Annahme nicht gestatten, dass er, nachdem schon über das Familiengut Streit erhoben worden, das Geld werde ausgezahlt haben."

tablets,[1] on the house for twenty minas, on the land for a talent; wishing to preserve to Aphobus both the one and the other. Seeing however by the issue of the late trial, with what feelings an unscrupulous rogue is regarded by a jury, he begins to reflect, and thought how hard my case would appear, if, after being so grossly plundered, Aphobus having all my estate, I had nothing of his to levy upon, and could show that I was hindered from levying by Onetor. What is it he does? He removes the tablets from the house, and says the portion is only a talent, and for that the land is mortgaged. Now it is evident that, if the tablets on the house were fairly set up and told a true story, those on the land were fair also. On the other hand, if the former were false and set up with a fraudulent intention, we may presume the latter were equally false. Upon this you should form your judgment, not from my statements, but from the defendant's own conduct. He took down the tablets of his own accord; no one compelled him; and thus by his own act he shows himself to be an impostor. I shall prove my words. Observe, he still maintains the land to be mortgaged for a talent; and that he claimed twenty minas also on the house by his tablets, and took them down again after the trial, I shall prove by witnesses who know the fact. Here, take the deposition.

[*The Deposition.*]

It is clear then, that having put up tablets on the house for twenty minas, and on the land for a talent, he intended to claim a charge upon them for eighty minas. Could you have stronger proof of the falsity of all he says, than his varying in his own account of the same transaction? To me it seems impossible to find a stronger proof.

Now mark his impudence. He dared to say in court, that he leaves me all the land is worth beyond a talent; when by his own valuation it is worth nothing more. What did you mean, Onetor, by fixing your tablets to the house for the

[1] To denote that the property was mortgaged. Pabst calls them "Verpfändungszeichen." Auger calls the putting up of the tablets "saisir la maison," or "faire saisie de la maison;" and to remove them "lever la saisie." The French word is equivalent to our *seizure* or *distraint*; and is not very appropriate to this proceeding of Onetor. See Appendix IV.

twenty extra minas (when eighty minas was your demand), if the land was really worth more? Why did you not charge the land with the twenty minas also? or is this your plan?—when it pleases you to preserve the estate of Aphobus, the land shall be worth a talent only, and the house be mortgaged to you for two thousand drachms besides, and the portion shall be eighty minas, and you insist on having both house and land; again, when that is not for your advantage, it shall be otherwise—the house shall be worth a talent, because I have it in my possession, and what remains of the farm shall be worth not less than two talents, that I may appear to be ill-using Aphobus, and not to be the injured party? Do you see that, while you pretend to have paid the portion, you are proved not to have paid it in any manner whatsoever? Proved, I say; for conduct which is true and genuine is just as it was in the beginning:[1] yours is shown to have been the contrary; you have acted with design, to aid the plots of my enemies.

From this you may see, and it is worth considering, what sort of an oath he would have sworn, if tendered to him. For, when he said the portion was eighty minas, if one had offered to give him that sum, upon his swearing to the truth of his own statements, what would he have done? It is plain, he would have taken the oath. On what ground can he deny that he would have sworn it, when he makes such a claim now? Well then; he proves out of his own mouth, that he would have been perjured; for now he tells you it was a talent, and not eighty minas, that he paid. What reason then have we to suppose, that he would be more forsworn in that case than in the present? And what opinion can one fairly entertain of a man, who convicts himself of perjury so easily?[2]

But perhaps all his conduct is not of a piece, not evident trickery from beginning to end. How can this be, when you

[1] Pabst—"Denn Diess ist einfach der wahre und unverfälschte Hergang der Sache, wie sie vom Anfang an geschehen ist."

The application of this maxim is, that Onetor's conduct was genuine, when he refused to pay his sister's portion to Aphobus; his subsequent conduct, with respect to the pretended mortgage, &c., was a fraud concerted with Aphobus.

[2] *i.e.* of being ready to commit perjury: as Pabst expresses it in his version—"der so leicht sich selbst überweiset, eines Meineides fähig zu seyn."

The point of this argument, such as it is, is derived from the Athenian

know that he spoke for Aphobus in reduction of damages, fixing them at a talent, and offering to be bail to me for that amount? Here again is proof, not only that Aphobus lived with his wife, and the defendant was on friendly terms with him, but also that the marriage portion never was paid. For what man would be such a fool as first to pay a large sum of money on the security of an estate with a doubtful title, and then, not content with his bad bargain, but as though the person who took him in had done a righteous act, to become his bail for a judgment debt? No man, I should think. It is not rational to suppose that a person, who was unable to recover a talent due to himself, should promise to pay that sum to another, and give bail for it too. No; the very act shows that he has never paid the portion, but took the mortgage as a friend of Aphobus, in return for my large property,[1] and hoping to make his sister a partner with him in my inheritance. And now he endeavours to cheat and deceive you, by saying, that he set up the tablets before judgment was given against Aphobus. Yes, Onetor; but not before you had given judgment against him; at least, if there is truth in your present story; for it is clear that, when you took these steps, you were in your own mind satisfied of his guilt. But indeed the argument is ridiculous; as if you, men of the jury, were not aware that all rogues consider what they shall say, and no one ever lost a cause for lack of words, or confessing himself to be in the wrong. His lies are first detected, and then the man's character becomes known. Such appears to me to be the defendant's case. Come tell me, Onetor, how can it be

practice of tendering what I have called the evidentiary oath, or wager of law. (See Vol. iii. Appendix ix. pp. 383—386.) The orator argues thus—Onetor at first claimed eighty minas: he now admits the falsehood of this claim, which ought to have been a talent only: but if I had offered to give him the eighty minas upon his swearing to the justice of the claim, it is clear he would have sworn to it: [Quære:] then he would have perjured himself: therefore he would perjure himself now: and therefore you cannot trust him, &c.

The argument, if good for anything, tends to show that a man's oath is no better than his bare word, and that a liar is always ready to commit perjury.

[1] Onetor does a good turn to Aphobus in taking the fictitious mortgage. In return for this, his sister is married to a man so much the richer by the plunder of Demosthenes; and perhaps Onetor himself comes in for a share of this.

just, that, if you put up tablets for eighty minas, the portion shall be eighty minas; and if for more, more; and if for less, less? Or how can it be just, when your sister up to this day has never lived with another man, or been separated from Aphobus, and when you have not paid the portion, and have not chosen to resort to the torture or to any other fair mode of determining these questions, that, because you say you have set up tablets, the farm shall be yours? I cannot see the justice of this. We must look to the truth, not to the contrivances by which men like you patch up a plausible story. Besides, good heavens! suppose it were ever so true that you had paid the portion (which you have not), who is to blame for that? yourselves; for you took my property as a security. Did not Aphobus take possession of my estate (for which judgment was given against him) ten whole years before he became your brother-in-law? And was it right that you should recover everything, while I, who have obtained a judgment, an oppressed orphan, and the loser of a real portion, who alone of all mankind ought to have been exempted from the risk of costs,[1] am thus reduced to distress, and have recovered nothing at all, though I have been ready to accede to any terms of your own proposing that were fair and reasonable?

THE ORATION AGAINST ZENOTHEMIS.

THE ARGUMENT.

Demon, for whom Demosthenes composed the speech now before us, was his uncle by marriage, as the reader has already seen (ante, page 93). The action, in which he procured the orator's assistance, was brought against him under the following circumstances.

He had entrusted a sum of money, which he held in partnership, to a corn-merchant, named Protus, who engaged to purchase corn in Sicily and bring it to Athens. The transaction between Demon and Protus was probably a loan of a similar character to what we read

[1] The risk of having to pay a sixth of the damages, upon failure to get a fifth part of the votes. This was called ἐπωβελία, which is a word not translatable.

of in the cases against Phormio and Lacritus, where the capitalist lends money to the merchant adventurer on a sort of bottomry speculation. The exact nature of their agreement is not explained. Certain it is however that, according to the terms, Demon was entitled to take possession of the cargo upon its arrival in the Athenian port, and, if not to dispose of it, at least to hold it as security till the loan with interest was repaid.

Protus embarked in a vessel belonging to one Hegestratus, bound for Syracuse, and having arrived at that place, purchased a quantity of corn and put it on board. While the ship was yet in port, Hegestratus enters into a conspiracy with Zenothemis, who was one of his passengers, to commit a fraud of a highly criminal nature. Each of them borrows money in Syracuse, and each refers to the other to vouch for his responsibility. Hegestratus tells the persons, with whom Zenothemis was negotiating, that he had a large cargo of goods on board his vessel; and Zenothemis makes the like representation in favour of Hegestratus. The money which they contrived to borrow in this way they send to Massilia (the modern Marseilles), of which town they were both natives, and neither of them brings any cargo on board. Their loans were made on the usual terms, that, if the ship returned safe to Syracuse, the lenders should receive back what they had lent with a large premium; if the ship were lost, they lost their money. To cheat the creditors therefore, Hegestratus and Zenothemis arranged to sink the vessel, after she had got out to sea, and save themselves by boat. The third day after leaving Syracuse, Hegestratus goes down in the night-time, and begins to cut a hole in the ship's bottom. He is caught in the act by the passengers, and, as they are about to inflict summary punishment on him, he throws himself overboard, misses the boat, which had been put out to save him, and is drowned. Zenothemis wishes the seamen to abandon the ship, but Protus, who is anxious to carry his corn to Athens, offers them a large reward if they will carry her into port, and by dint of great exertions they get her safe to Cephallenia, one of the Ionian islands. There, after the ship had undergone repairs, Zenothemis proposed that she should sail to Marseilles. The matter was referred to the authorities of the island, who decided that she should be taken to Athens, her original place of destination.

Upon the ship's arrival, Protus gives notice to Demon and his partners that the corn was safe in port, and they immediately come down to receive possession from him. To their surprise they find, that the corn is claimed by Zenothemis, under the pretence that it had been purchased by Hegestratus, and that he had lent money to Hegestratus upon it. Words take place between them, and Zenothemis proceeds to assert his claim by unlading the cargo; but this is prevented by Protus and Demon, who lay hands upon him and remove him. Thereupon he commences an action against each of them. To the action against Demon the present defensive pleading was prepared by Demosthenes.

The defendant puts in a special plea, alleging that the action is not maintainable, because there had been no contract between the plaintiff and himself, and the Athenian law only allowed actions of the

present kind, where money had been advanced under a written contract, upon some commercial enterprise from or to the port of Athens. To make this intelligible, we must bear in mind, that the suit against Demon was one of that class which the Athenians called "mercantile actions;" for it was only to such actions that the pleading in question, and the law upon which it was founded, could have any application. To suppose that a merchant or a shipowner could have no legal redress for an injury, because the wrongdoer had not entered into such a contract with him as that mentioned in the law, would be manifestly absurd. But what the law meant was, that they should not be at liberty to bring mercantile actions (properly so called), unless the above-mentioned conditions were complied with. Now these were actions of a peculiar kind, and were intended for the advantage of people engaged in commerce. They were tried before the Thesmothetæ during the six winter months, from Boedromion to Munychion, while the ships were laid up in harbour. The Judges were compelled to bring them to a final decision within a month; and the losing party might be held to bail for the amount of the judgment recovered. These advantages were reserved for commercial enterprises to or from Athens; for it was the policy of the Athenians to encourage their own trade, and particularly the importation of corn to their own country; and they considered that they were not bound to lend any extraordinary assistance to the enforcing of contracts in which Athens had no interest. The condition that the contract should be in writing was one of obvious policy, the same indeed which has dictated many similar enactments in our own and other legal codes.

That it was a mercantile action which Zenothemis brought against Demon, is expressly stated by the author of the Greek argument, and is to be inferred from the language of the orator. Whether it was maintainable by law, or whether the objection raised by the special plea was a valid one, we are not in a condition to determine. Perhaps the plaintiff might have replied to this effect—"I satisfy the requisition of the Athenian law; for I had a contract in writing with Hegestratus, and I lent him money on an adventure from Syracuse to Athens. True, I have no contract with Demon; but I am seeking redress against his tortious act, by which I should lose the benefit of my contract with Hegestratus. In effect therefore I am seeking to enforce a contract agreeable to the terms of your statute." We may conceive that the plaintiff was prepared with some such argument as this. The defendant does not seem to place great reliance on his special plea, and, as was usual upon the trial of these pleadings, he enters fully into the merits of the case, and endeavours to show that he has a good defence.

The tortious act complained of, is the defendant's forcible taking of the plaintiff's corn. The forcible character of the taking, like our trespass *vi et armis*, is a fiction of law, technically necessary to support the action, as explained in the fourth appendix to this volume. The defendant does not dispute that he has committed the formal trespass, but justifies it on the ground that he only took his own property, which it was lawful for him to do. This (on the merits of the case) is the

sole question to be tried, whether the right of property was in the plaintiff or in the defendant.

In this, as in most of the private speeches of Demosthenes, where we see only one-sided statements and arguments, it is difficult even to conjecture on which side lay the truth and justice of the case. Here we may observe, however, that the defendant is fighting an uphill battle, owing apparently to the conduct of Protus, who, after supporting his claim up to a certain point, makes terms (as Demon says) with the opponent, suffers judgment to go by default in the action brought against him by Zenothemis, and keeps out of the way to avoid giving evidence. It is manifest that Protus should have been Demon's principal witness, for it was he who purchased the corn; and Demon labours under a difficulty in making out his case without him. His great point is to show, that the present conduct of Protus is inconsistent with his original acts; and he is helped to some extent by the absence of Protus; for, had he been honestly opposed to him, he would have given evidence for Zenothemis, which he did not venture to do. The motives of Protus in going over to Zenothemis are not made very clear by the orator; but this arises in some measure from our not understanding his exact position with respect to Demon.

As to the mercantile actions, I refer the reader to Meier and Schömann, Attic Process, pages 67, 84, 539, 579. Of the practice upon a *Paragraphe*, or special plea, I have given an explanation in Volume III. Appendix IX. pages 378, 379.

This speech has come down to us in an imperfect state. We collect from the fragmentary passage at the end, that it was written some time after Demosthenes had entered upon his political career. Its date therefore must have been after B.C. 355.

As I have pleaded, men of the jury, that the action is not maintainable, I wish first to say a word about the laws, according to which I put in the plea. The laws, men of the jury, declare, that actions between shipowners and merchants shall be upon loans to Athens or from Athens,[1] and concerning which there are contracts in writing; and if any one sues without being so entitled, his action shall not be maintainable. Now between the plaintiff Zenothemis and myself

[1] *i.e.* Loans for commercial adventures to Athens or from Athens. Pabst—"bei dem Verkehre, der von einem andern Orte nach Athen, und von Athen nach einem andern Orte getrieben wird:" Meier and Schömann, Att. Proc. p. 540, explain it thus: "über diejenigen Schuldverschreibungen, welche entweder festsetzten, dass in einem attischen Emporium Waaren als Hypothek eingenommen, oder dass sie in einem solchen abgeladen und verkauft werden sollten, und über die hieraus entspringenden Rechtsverhältnisse für Kaufleute und Schiffsherren." See what I have said in the argument.

there never was any loan or contract in writing, as he himself indeed acknowledges in the plaint. He says he lent money to Hegestratus a shipowner, and that, after he lost his life in the sea, we appropriated the freight: this is the charge in the plaint. I will in the same speech prove to you that the action is not maintainable, and expose the whole of this man's rascally plot. I entreat you, men of the jury, if you ever did pay attention to any matter, to attend to this. You will hear a case of unparalleled audacity and fraud, if I am only able, as I think I shall be, to explain to you his proceedings.

Zenothemis the plaintiff, being an agent of Hegestratus the shipowner, whom he himself states in his plaint to have perished in the sea, (how this occurred, he adds not, but I will tell you), conspired with him to perpetrate the following fraud. He and the plaintiff borrowed money at Syracuse: Hegestratus admitted to persons lending to the plaintiff, when they made any inquiries, that the plaintiff had a large quantity of corn in the ship; while this man admitted to persons who were about to lend money to Hegestratus, that the cargo of the ship belonged to him. As one was shipowner, and the other passenger, they naturally got credit for the statements which they made of each other. Immediately after they got the money, they sent it home to Massilia, and brought nothing into the ship. The agreement being, as such agreements usually are,[1] to repay the money if the vessel arrived safe, they, in order to rob their creditors, laid a plot to sink the ship. Accordingly, when they were two or three days' voyage from land, Hegestratus went down at night into the hold of the vessel, and began to cut a hole in the bottom; the plaintiff, as if he knew nothing about it, remained above with the other passengers. There being a noise, the people in the vessel discover that something wrong is going on in the hold, and run down to prevent it. Hegestratus, when he was caught in the act, expecting that he should be punished, runs away, and being pursued throws himself into the sea: it being dark, he missed the boat and was drowned. Thus he perished in a miserable manner, as such a scoundrel deserved, meeting the fate which he designed to inflict on others. The plaintiff, his partner and accomplice,

[1] See Appendix V.

at that moment on board ship, immediately after the criminal act, affecting to know nothing about it, and to be in as much consternation as the rest, advised the sailing-master and mariners to get into the boat and abandon the ship as quickly as possible, as there was no hope of saving her and she was certain to sink almost directly: so he thought their criminal design might be accomplished, and by the loss of the ship they might rob the creditors of their money. Having failed in this attempt—(for it was opposed by our agent[1] who was on board, and who offered large rewards to the crew if they would save the ship; and the vessel was brought safe into Cephallenia, chiefly by the favour of the Gods, and next to them, through the good conduct of the seamen)—he endeavoured, in conjunction with the Massiliotes, the fellow-countrymen of Hegestratus, to prevent the ship returning to Athens, alleging that he himself and the money came from Massilia,[2] and the shipowner and lenders were of that place. Here too he failed, the magistrates in Cephallenia ordering that the ship should return to Athens, from whose port she commenced her voyage; and thereupon this man, who, one would have thought, would never have dared to come here after his wicked acts and contrivances—this man, O Athenians, is so superlatively impudent and audacious, that he has not only come here, but has claimed my corn, and even brought an action against me.

What then do you suppose is the reason? What can have encouraged the plaintiff to come here and commence his action? I will tell you, men of the jury: it gives me pain to do so, I solemnly assure you; but I am compelled. There are gangs of rascally fellows leagued together in Piræus; you've only to see them to know who they are. When the plaintiff was intriguing to prevent the ship returning to Athens, we got one of these persons to go out as commissioner: he was a member of the council,[3] slightly known

[1] That is, Protus, who had bought the corn with the defendant's money, and who, from the nature of his contract, appears to have held a sort of middle position between an agent and a borrower.

[2] Pabst thinks that *ἐκεῖθεν* means, from Sicily, or from the west generally.

[3] *ἐκ βουλῆς τινα.* I agree with Schäfer as to the meaning of these words. The other interpretation of *ἐκ βουλῆς*, "after a consultation," is adopted by Pabst.

to us, though we little thought what sort of a creature he was; indeed it was as great a misfortune, if it is possible to say so, as our having to deal with scoundrels in the beginning. This man whom we commissioned—his name is Aristophon; the same person who has managed that affair of Miccalion (so we are now informed)—has sold himself to the plaintiff and undertaken this job for him; indeed he is the plaintiff's factotum in this case. Zenothemis has been only too glad to accept his services. For when he failed in effecting the destruction of the vessel, not having the means of repaying the money he had borrowed—(how could he, when he had never put its value on board?)—he lays claim to my goods, and pretends to have lent money to Hegestratus on the security of that corn which our agent in his vessel purchased. The lenders, who had been defrauded in the first instance, seeing that, instead of money, they have only a rascal for their debtor, are in hopes that, if Zenothemis imposes on you, they may recover their own out of my property, and so are compelled for the sake of their own interest to espouse the cause of this man, who they know is making a fraudulent demand against me.

Such (to speak in a short compass) is the matter upon which you have to give your verdict. I will first produce to you the witnesses who speak to these facts, and then explain the rest of the case. Now read me the depositions.

[*The Depositions.*]

Upon the arrival of the vessel at Athens—the Cephallenians having ordered, notwithstanding the plaintiff's remonstrances, that the vessel should return to the port from which she first sailed—those persons who had lent money on the ship from Athens took possession of her immediately; and the purchaser took possession of the corn; that was the person who had borrowed money of us. Afterwards came the plaintiff, bringing with him our commissioner, Aristophon, and laid claim to the corn, saying that he had lent money to Hegestratus. "What do you say, man?" exclaimed Protus immediately—that was the name of the man who imported the corn, and who was our debtor—"You give money to Hegestratus, whom you helped to deceive people, that he might obtain credit! and when he was always

telling you that those who parted with their money would lose it! Would you, hearing that, have parted with your money?" He declared that he did, and brazened it out. "Well, granting what you say to be perfectly true"—replied one of the persons present—"your partner and fellow-countryman, Hegestratus, has tricked you, as it appears, and for this he has passed sentence of death upon himself and perished." "Aye"—said another who stood by—"and that this man has been throughout the accomplice of the other, I'll give you a proof. Before the attempt was made to bore a hole in the ship, this man and Hegestratus deposited a written agreement with one of the fellow-passengers. But, if you gave your money in confidence, why should you have taken an assurance before the wicked act? if you were distrustful, why did you not, as the others did, get a legal acknowledgment on land?" I needn't go into all the particulars. We got no result by these speeches. He stuck to the corn. Protus and Phertatus, the partner of Protus, wanted to remove him; but he resisted, and declared point blank, that he would not be put out of possession by any one but me. After that, Protus and myself challenged him to go before the authorities at Syracuse; and if it should appear that he (Protus) bought the corn, and the customs' duties were entered in his name, and he was the person who paid the price, then we proposed that the plaintiff should be punished as a rogue; in the contrary event, that he should recover his expenses and receive a talent besides, and we relinquish our claim to the corn. Notwithstanding this challenge and these declarations by Protus and me, it was of no use; I had no choice but either myself to remove the plaintiff by force, or to lose my security when it was safe in port before my eyes. And Protus again—he protested that he was willing to do anything—to remove the plaintiff, to confirm my acts, or go out to Sicily:[1] but if, in spite of such willingness on his part, I chose to abandon the corn to Zenothemis, he said it didn't matter to him. To prove the

[1] I have made the best I could of this obscure and probably corrupt passage. Pabst, who adopts Schäfer's emendation, βεβαιῶν, translates thus: "Denn Protus seinerseits erklärte vor Zeugen, dass er das Getreide ausschiffen wolle, und versicherte dabei, er sey bereit, nach Sicilien zurückzuschiffen."

truth of these statements—that the plaintiff refused to be put out of possession except by me,[1] that he did not accept the challenge to go out, and that he deposited the agreement in the vessel—read the depositions:

[*The Depositions.*]

When therefore he would neither be removed by Protus, nor make a voyage to Sicily to get the truth decided, and when it appeared that he was privy to all the villainies of Hegestratus, we who had lent our money at Athens, and who had received our corn from the man who honestly purchased it out there, had no alternative but to take it from the plaintiff perforce. For what else could we have done? It had not occurred to any of us partners to imagine, that you would ever pronounce the plaintiff to be the owner of corn, which he advised the mariners to leave, so that it might be lost by the sinking of the ship. This indeed is the strongest proof that it in no way belongs to him; for who would have advised persons willing to save his own corn to abandon it? Or who would not have accepted the challenge and made the voyage to Sicily, where these things might have been clearly ascertained? Again, I was not likely to believe this of you, that you would decide that the plaintiff might enter an action for this cargo, whose entrance[2] into your port he tried in more ways than one to prevent, first, when he advised the crew to abandon it, secondly, when in Cephallenia he opposed the ship's being brought to Athens. For what a shameful and monstrous thing it would be, after the Cephallenians ordering the ship to proceed to your port, so that Athenians might get their property, for you, who are Athenians, to adjudge the property of your countrymen to persons who wished to throw it into the sea, and to allow the plaintiff to enter an action for goods, whose importation he tried wholly to prevent! O heavens! you will surely do nothing of the kind. Now read me what I have pleaded.

[*The Plea.*]

[1] The object of Zenothemis, in insisting upon Demon's removing him, probably was, that he considered Demon to be a more responsible person than Protus.

[2] Here is a play on the word εἰσαγώγιμα.

Read me the law.

[*The Law.*]

That I have pleaded in accordance with the laws, that the action is not maintainable, I think has been sufficiently proved; but you shall hear the contrivance of that cunning man, Aristophon, who has arranged the whole plot. When they saw that, according to the facts, they had no ground to stand upon, they open a treaty with Protus, and persuade the man to surrender the case to them. They had, it seems, been trying that from the beginning, as now has become apparent to us, but they had not been able to prevail on him. For this fellow Protus, while he expected to get a profit out of the corn imported, stuck close to it, and thought it better to make a profit for himself and pay us our just dues, than to enter into a league with them, and thus to make them sharers in the advantage and do us an injury. But when, after his arrival here and some negotiation about these matters, corn had fallen in price, he suddenly formed other views. And at the same time, O Athenians (for the whole truth shall be told you), we his creditors began to quarrel and be harsh with him, as the loss on the corn was about to fall on us, and we complained that he had brought us a petty-fogging rascal instead of our money. For these reasons, and being by nature (as we may presume) not very honest, he goes over to these people, and consents to let judgment go by default in the action, which Zenothemis brought against him before they had come to terms. For, had he released Protus, his demand against us would at once have been shown to be vexatious: and Protus would not consent to a judgment by default while he remained at Athens; for then, in case they performed their agreement with him—well and good—if they did not, he might set aside the judgment by default. But why do I dwell on these particulars? If Protus actually did what the plaintiff has put in his plaint, he deserves, in my opinion, not only to have a judgment against him, but to suffer death. If in the midst of tempest and distress he was drinking so much wine as to be like madness, what punishment is too severe for him? Or if he was stealing papers, or opening them clandestinely? With respect to these matters, however, you will form your own private

opinions. But don't mix up the proceedings of that action with mine, Zenothemis. If Protus has done you injury by word or deed, you have, as it seems, satisfaction: none of us opposed you, or seeks now to deprecate the consequences. If, on the other hand, you have proceeded against him vexatiously, that most surely is no business of ours. But the man is out of the way. Yes; through you; that he may avoid giving evidence on my behalf, and that you may now say against him what you please. For, had not the judgment by default been your contrivance, you would at the same time have summoned him and held him to bail before the Polemarch; and, if he had given bail, he would have been compelled to stay, or you would have had responsible persons to look to for your damages; if he had not given bail, he would have gone to the lodging.[1] Now however, having entered into a combination together, Protus expects by your assistance to escape payment of the deficiency[2] which has been created, and you by making a charge against him to obtain possession of my property. Here is the proof—I shall summon him as a witness: you neither held him to bail, nor will summon him as a witness now.

There is yet another way in which they hope to deceive and impose on you. They will accuse Demosthenes, and say that I relied on his assistance when I dispossessed the plaintiff, imagining that this charge will obtain credit because he is an orator and a person of notoriety. Demosthenes, men of Athens, is certainly my blood-relation, (I swear by all the Gods I will tell you the truth)—I went and entreated him to support and assist me as far as he was able: "Demon," said he, "I will do as you desire: it would be cruel to refuse. At the same time you must consider both your own position and mine. Since I began to speak on public affairs, I have never interfered in any private cause: and even in politics I have retired from business of this kind. . . ."

* * * * *

[*The rest is lost.*]

[1] See ante, page 35, note 1.

[2] "Defectus ob imminutum pretium frumenti; quod si vendatur, non redeat quantum debetur creditori."—Schäfer.

How Protus could be a gainer by the alleged fraud, we have not the materials for making out. For this, we ought to know the exact nature of the contract between Demon and Protus, and also the extent of the fall in the price of corn.

THE ORATION AGAINST APATURIUS.

THE ARGUMENT.

Apaturius, the plaintiff, sues the defendant, whose name does not appear, for twenty minas, alleged to be due from him upon a guaranty which he had given for the performance of an award by one Parmeno. The defendant denies that he ever gave such guaranty, stating that another person, and not himself, was Parmeno's surety. He alleges also, that the award given against Parmeno was illegal and fraudulent, having been made contrary to the terms of the reference between Apaturius and Parmeno; for the reference was to three arbitrators, and the award was made by one only, acting in collusion with Apaturius. The defendant put in three special pleas: first, a plea similar to that in the last case; secondly, that there had been a release of all causes of action between the plaintiff and himself; thirdly, that the action was brought too late, as guarantees were by an Athenian statute declared to be in force for one year only. The first of these pleas seems hardly to apply to the present case, (see the argument to the speech against Zenothemis). The release appears to have been given previously to the alleged guaranty, and to have related to other matters. And the defendant does not strongly insist upon the third special plea. We have not the Athenian statute (which he refers to) before us, but, as the defendant intimates that he did not much rely upon it, we may reasonably conjecture that the law afforded some answer to this objection. The case was brought to a hearing (according to the practice) upon the special pleas; but the defendant, not much relying upon them, enters into the general merits of the case; and his chief point of contention is, that the award was invalid for the reason above mentioned. He gives a history of antecedent transactions between the plaintiff and himself, partly to explain the origin of his connexion with him, and partly with a view to show, that the present proceeding was got up from malicious motives.

The law, men of Athens, declares that merchants and shipowners shall have their actions before the Judges, if any wrong is done them in their trade, either upon a voyage from Athens or upon a voyage to Athens; and it enacts, that the wrongdoers shall suffer imprisonment until they have paid what is adjudged against them, so that wrong may not lightly

be done to commercial people. To those however who are sued upon non-existent contracts[1] the law gives the protection of a special plea, so that vexatious demands may be prevented, and the actions be confined to such merchants and shipowners as are in reality injured. And many defendants in mercantile suits have before now pleaded according to this law, and have come into court before you and shown that their opponents were making false and vexatious charges under the pretence of trading. Who the person is that has conspired with the plaintiff against me and got up the present proceedings, will in the course of my address become apparent to you. As Apaturius however is making an unfounded charge against me and suing me contrary to law, as there has been a mutual release and discharge from all the engagements entered into between him and myself, and there is no other loan transaction between us, either on sea or land security,[2] I have pleaded that the action is not maintainable, according to these laws which I produce:

[*The Laws.*]

That Apaturius has commenced his action against me contrary to these laws, and has made an unfounded demand, I shall show you by many proofs. I, men of the jury, have been for a considerable period engaged in foreign trade, and up to a certain time I made voyages myself; it is not quite seven years since I gave up going to sea, and now, having a moderate capital, I make it my business to lend it on maritime adventures. As I have been to many places and constantly attended the marts of commerce, I am acquainted with most of the seafaring people; and I am very intimate with these men from Byzantium, through having stayed so much there. My position being such as I have told you, about three years ago the plaintiff made a voyage to Athens with his fellow-countryman Parmeno, who is a Byzantine by birth, but exiled from his country. The

[1] That is, as Pabst expresses it more fully,—"die man wegen Forderungen vor Gericht stellt, worüber keine schriftlichen Contrakte vorhanden sind."—See the opening of the last speech, and the argument.

[2] Pabst—"und ich auch keine neue Verbindlichkeit durch eine Schuldverschreibung gegen ihn eingegangen habe, weder im Seehandel, noch in Landhandelsachen."

plaintiff and Parmeno came to me on the exchange, and began to talk about money. It happened that the plaintiff owed a sum of forty minas on his ship, and the creditors were pressing for payment, and were about to seize the ship, as being forfeited by his default.[1] He being in distress, Parmeno agreed to give him ten minas, and he requested me also to advance him thirty minas, alleging that his creditors (who coveted his ship) had slandered him on the exchange, their object being to get possession of the ship by reducing him to absolute insolvency. I happened to have no ready money by me, but, being on good terms with Heraclides the banker, I persuaded him to lend the sum required and take me as surety. Just after the thirty minas had been procured, Parmeno had a quarrel with the plaintiff; but having agreed to advance him ten minas, and having given him three of them, he was compelled, on account of the money which he had parted with, to let him have the remainder also. For the reason mentioned however, he did not wish to conclude the loan in his own name, but requested me to make it as safe for him as I possibly could. So I received the seven minas from Parmeno, and for the three, which the plaintiff had previously obtained from him, I got the plaintiff to transfer his obligation to me;[2] then I take a mortgage of the ship and the slaves, till he should repay as well the ten minas which he had received through me, as the thirty for which he had made me his surety to the banker. Hear the depositions that prove these statements:

[*The Depositions.*]

In this manner Apaturius the plaintiff got rid of his creditors. Not long afterwards, the bank having been broken, and Heraclides having been obliged for a time to keep out of the way, the plaintiff endeavours clandestinely to send the slaves from Athens and remove the ship out of the harbour. From this arose my first misunderstanding with him. For

[1] Pabst—"legten Beschlag auf das Schiff als Unterpfand, weil der Zahlungstermin nicht eingehalten worden war."

[2] The commentators have not been happy in their interpretations of *ἀνθομολογησάμενος πρὸς τοῦτον*. Reiske, in his Index, imagines there was a proceeding before the magistrate. Pabst omits these words. Auger is near the meaning: "mettant sur mon compte les trois qu'il avoit déja données."

Parmeno, discovering that the slaves were about to be carried off, lays his hands upon them and stops it, and prevented the removal of the ship; he then sends for me and tells me what had happened. When I heard of it, I regarded this man as a consummate scoundrel for his attempt, and I began to consider what was the best way to free myself from my guaranty to the bank, and to prevent the foreigner's losing what he had lent to this man through me. Having placed some persons to watch the ship, I explained the matter to the sureties of the bank, and delivered the security to them, informing them that the foreigner had ten minas on the ship. After this, I attached the slaves, so that, in case there were anything short, the deficiency might be made good by the slaves. In such manner, when I found Apaturius acting wrong, I secured both the foreigner's rights and my own. Apaturius however, as if he had been the injured and not the injuring party, complained of my conduct, and asked if I was not satisfied with getting quit of my own guaranty to the bank, but I must attach the ship and the slaves for Parmeno's money also, and make an enemy of him (Apaturius) on account of a man in exile. I replied, that I was all the less inclined to forsake a person who had put trust in me, because he was in exile and misfortune when this man wronged him. In short, I used every exertion, incurred the utmost hostility of the plaintiff, and with difficulty recovered the money, the ship having been sold for forty minas, the sum for which it had been mortgaged. The thirty minas having then been paid to the bank, and the ten minas to Parmeno, we in the presence of several witnesses cancelled the bond upon which the money was lent, and released and discharged each other from our engagements, so that I had nothing further to do with the plaintiff, nor he with me. Now hear the depositions to prove the facts I state:

[*The Depositions.*]

Since that I have had no transaction with him great or small. Parmeno sued Apaturius for the blows which he received from him when he stopped the carrying off of the slaves, and for damages because he had prevented him making a voyage to Sicily. While the action was pending, Parmeno tenders an oath to Apaturius concerning some particulars of

the plaint, and he accepted it, and gave a deposit, to be forfeited if he did not swear the oath. To prove the truth of these statements, take the depositions:

[*The Depositions.*]

After having accepted the oath, as he was aware that many persons would know him to be perjured, he did not attend to swear it, but, as if he could discharge himself of the oath by bringing an action, he summons Parmeno into court. While both their actions were pending, under the advice of persons present they came to a reference, and drawing up articles of submission, they refer matters to one common arbitrator, their own countryman Phocritus, and each appointed one to act as assessor, the plaintiff choosing Aristocles of Œa, and Parmeno me. And they agreed in the articles that, if we were all three unanimous, our judgment should be binding on them, but, if we were not unanimous, they should be bound to acquiesce in whatever the two decided. Having concluded these terms, they gave sureties to one another for their fulfilment; the plaintiff's surety was Aristocles, Parmeno's was Archippus of Myrrhinus. And in the first instance they deposited the agreement of submission with Phocritus; afterwards, upon Phocritus requesting them to deposit it with some one else, they deposit it with Aristocles. In proof of my statements, hear the depositions:

[*The Depositions.*]

That the articles of submission were deposited with Aristocles, and that the reference was to Phocritus and Aristocles and me, has been proved to you by the testimony of those who knew the facts. I entreat you, men of the jury, to hear from me what occurred afterwards; for from this it will be manifest to you that the claim made against me by the plaintiff Apaturius is groundless and vexatious. When he perceived that Phocritus and I were of the same opinion, and saw that we should give our award against him, wishing to break off the reference, he attempted, in concert with the man who held the articles, to destroy them. And he went so far as to contend, that Aristocles was his arbitrator, and said that Phocritus and I had no further authority than to assist in reconciling the parties. Parmeno, indignant at this

assertion, desired Aristocles to produce the articles of submission, adding, that the proof was not far off, if any tricks were played with the document, for his own servant had written it out. Aristocles promised to produce the articles, but he has not given us a sight of them to this hour. He met us at the appointed day in the temple of Vulcan, and as an excuse for not bringing the paper stated, that his boy while waiting for him had fallen asleep and lost it. The contriver of this plot was Eryxias, the physician from Piræus, an intimate friend of Aristocles; and he it is who has got up these proceedings against me, because he has a quarrel with me. Now for the evidence, that Aristocles pretended he had lost the paper.

[*The Depositions.*]

After this the reference was at an end, the articles of submission having been made away with, and the authority of the arbitrators disputed. They endeavoured to draw up new articles, but could not agree about them, as the plaintiff wanted Aristocles, and Parmeno wanted the three, to whom the reference had been made originally. However, though there had been no fresh articles drawn, though the original articles had been made away with, the person who had caused their disappearance was impudent enough to declare, that he would pronounce his award alone. Parmeno in the presence of witnesses, whom he had brought expressly for the purpose, gave notice to Aristocles not to make an award against him contrary to the articles without his colleagues. Hear the evidence of the persons, in whose presence he gave the notice.

[*The Deposition.*]

After this, men of the jury, a heavy misfortune befel Parmeno. He was dwelling in Ophrynium,[1] on account of his exile from home, when the earthquake happened in the Chersonese; his house was shaken down, and his wife and children perished. As soon as he heard of the misfortune, he took ship and departed from Athens. Aristocles, notwithstanding the man's notice (given in the presence of witnesses), not to make an award against him without the co-arbitrators, after Parmeno had left the country on account of his misfor-

[1] A town on the Asiatic side of the Hellespont.

tune, pronounced an award against him for non-appearance. And, while Phocritus and I, who were nominated in the same articles, declined to act in the arbitration because the plaintiff disputed our having authority from him, Aristocles, whose authority was disputed, and who had also been expressly forbidden to act, nevertheless pronounced his judgment; a thing which not one of you, and indeed no other Athenian, would venture to do.

For these proceedings of Apaturius and the arbitrator in making away with the articles and pronouncing the award, the injured party, if ever he returns safe to Athens, will obtain satisfaction from them. As Apaturius however has been impudent enough to go to law with me, on the alleged ground that I undertook to pay whatever sum should be awarded against Parmeno, and as he asserts that I was introduced as surety into the articles, I will take the proper way to dispose of such a charge; I will first call witnesses before you, to prove that it was not I who became surety for Parmeno, but Archippus of Myrrhinus, and then I will proceed, men of the jury, to establish my defence by circumstantial proofs.

In the first place then I consider, that the time is evidence for me, that the claim is unfounded. For the reference between Apaturius and Parmeno and the decision of Aristocles took place three years ago; and the merchants have their actions every month from Boedromion to Munychion, so that they may obtain speedy justice and put to sea. If then I was in truth a surety for Parmeno, first let me ask, why did he not compel me to pay what I had guaranteed immediately after the judgment? He can never say, that he was reluctant to give me offence, on account of his friendly feeling towards me: for I had rigorously compelled him to pay the thousand drachms due to Parmeno; and when he was removing the ship out of port, with intent to run away and escape payment of the debt to the bank, he was prevented by me. Therefore, if I had made myself responsible for Parmeno, he would not have demanded the guaranty three years afterwards, but would have taken measures to get it immediately.

But perhaps he was in easy circumstances, so that he might conveniently come upon me at a later period, and he had then no leisure, as he was going to sea. Why, he had

been forced for want of money to part with his effects and sell his ship. And, supposing even that there was any cause which prevented his suing me at that moment, why, when he was in the country last year, did he never venture, I will not say to go to law, but even to make a demand? It was clearly his business, if judgment had been given for him against Parmeno and I was surety, to come to me in person with witnesses, and demand the sum guaranteed, if not the year before last, at all events in the year following; then, if I offered payment, to take his money, otherwise to commence an action. For, upon claims of this sort, all people make demands before they go to law. Now there is not a witness who will say he was ever present, either last year or the year before last, when Apaturius took any legal proceeding against me, or spoke a single word to me on the subject of the claim for which he now sues me. To prove that he was in the country last year when the law-courts were open, please to take the deposition.

[*The Deposition.*]

Now take the law which enacts that guaranties shall be in force for a year.[1] And I don't insist under the statute, that I ought not to pay damages if I became surety, but I say, the statute is my witness that I never was surety, and so is the plaintiff himself; for otherwise he would have sued me on the guaranty in the time specified by the law.

[*The Law.*]

Let this serve me for an additional proof of the falsehood of Apaturius. If I had become surety to him for Parmeno, I should never have incurred the enmity of the plaintiff for Parmeno's sake, to protect him against losing what he lent to the plaintiff through me, and yet have allowed Parmeno to leave me liable on my guaranty to the plaintiff. For what hope had I that any forbearance would be shown me by the plaintiff, whom I had myself compelled to do justice to Parmeno? And, when I had been so rigorous in forcing him to satisfy the guarantee to the bank, what treatment could I expect from him myself?

[1] The statute would begin to run, not from the date of the guaranty, but from the time of default. It may possibly be, that Parmeno's absence abroad extended the period of liability.

It is worthy also of your consideration, men of the jury, that, if I had been surety, I should never have denied the fact: for my argument was much stronger, if I admitted the guaranty and appealed to the articles, which contained the terms of the reference. Evidence has been given to you, that the reference was made to three arbitrators. If there has been no decision by the three, for what purpose should I have denied the guaranty? For, if the judgment was not given according to the articles, I should not be liable on the guaranty. Therefore, men of the jury, I should never have abandoned a good existing defence, if I had been surety, and had recourse to a denial of the fact.[1]

Again, it has been proved to you in evidence, that, when the articles of submission were made away with by these men, Apaturius and Parmeno sought to have fresh articles drawn up, as if their former agreement was of no effect. Now, when for the judgment that was to be given they endeavoured to get fresh articles drawn, the existing ones being lost, how was it possible that without fresh articles having been drawn there could be either an arbitration or a guaranty? Their disagreement upon this very point prevented the drawing up of another writing, as the plaintiff insisted upon having one arbitrator, and Parmeno required three. But if the original articles were made away with, by which he alleges that I became surety, and new articles were not framed, how can he rightly sue me, against whom he can produce no agreement?

That Parmeno forbade Aristocles to pronounce judgment against him without his co-arbitrators, has been proved to you by the testimony of witnesses. When it appears therefore that the same person has made away with the writing, which contained the terms of arbitration, and says that he has made an award without his colleagues, in spite of the prohibitory notice, how can you honestly condemn me upon the credit of this man? Consider, men of the jury. Suppose Apaturius the plaintiff were now proceeding not against

[1] This is a weak argument. A man may have two good defences, or he may set up two false defences. In the first case, there is no reason why he should abandon either of the strings to his bow; and in the second case, the truth of one defence cannot in any degree be established by the fact that another is pleaded.

me, but against Parmeno, to recover the twenty minas, relying upon the judgment of Aristocles, and Parmeno were making his defence here in person, and calling witnesses, to prove first, that Aristocles was not appointed single arbitrator, but only one of three, secondly, that he forbade Aristocles to publish an award against him without his colleagues, and that, after his wife and children had perished by the earthquake, and he in consequence of that misfortune had sailed home, the person who had made away with the articles of submission gave judgment by default against him in his absence—is there one of you who, on Parmeno's making such a defence, would have upheld an award so illegally pronounced? We will not put the case that everything was disputed; let us suppose that the articles were in existence, and that the arbitrator Aristocles was admitted to possess sole authority, and that Parmeno had not forbidden him to make an award against him, but the misfortune had happened to the man before the award was pronounced—what adversary or what arbitrator would have been so cruel as not to postpone the proceedings till the man's return to this country? Then, if Parmeno, were it his defence, would be thought to have in every way a better case than the plaintiff, how can you justly give a verdict against me, who have no contract whatsoever with this man?

That my special plea is a good one, that Apaturius has made an unfounded claim against me, and brought his action contrary to the laws, I think, men of the jury, has been made out to you by many proofs. Upon the main question—Apaturius will not even venture to assert, that he has any articles of submission. When he falsely tells you that I was inserted as surety in the articles with Parmeno, ask him for the articles; and meet him with this answer, that all people, when they enter into written agreements with each other, deposit them under seal with persons whom they can trust for this express purpose, that, in case of any dispute between them, they may have the means of referring to the document and so clearing up the disputed point. And when a man, removing the evidence out of the way, attempts to deceive you with words, how can you put any confidence in him? But perhaps (for that's the easiest course for persons who mean to cheat and make false claims) some witness will depose

for him against me. If then I proceed against the witness, how will he make out that his testimony was true? By the articles of submission? Then don't let this be postponed; let the person who has the articles bring them here directly. If he says they are lost, where can I, oppressed by false testimony, find the means of refuting it?[1] If the writing had been deposited with me, Apaturius might have alleged that I had suppressed the articles on account of my guarantee; but if the articles were deposited with Aristocles, how comes it, if they have been lost without the plaintiff's knowledge, that, instead of suing the person who received and does not produce them, he makes a charge against me, calling as witness against me the person who has suppressed the articles, whom he ought to regard with displeasure, if they were not conspiring together to play tricks?

I have honestly stated my case, to the best of my ability. It is for you to give a righteous verdict according to the laws.

[1] "If he says it is lost, and his witness gives a false account of its contents, what means have I of convicting him of falsehood?"—*i.e.* "what other means but by showing that it is his business to produce the writing? His witness kept it, not I. If he will not produce it, you ought not to believe him."

Such is the argument. In effect it would go this length, that a person who loses a document in his custody, ought under no circumstances to be allowed to give secondary evidence of its contents. We hold that, on good proof of the loss, secondary evidence may be given; and the absence of the document is matter of observation, the force of which depends on the circumstances of the case.

I have understood the words, *πόθεν λάβω ἐγὼ τὸν ἔλεγχον καταψευδομαρτυρηθείς*, as Wolf did—"Unde ego mendacio circumventus argumenta petam?" And thus Pabst: "Wodurch soll ich denn, von unwahrem Zeugniss umstrickt, Beweisgründe zur Widerlegung nehmen?" Schäfer however thinks that *λάβω τὸν ἔλεγχον* is to be understood passively, and he translates—"quo me argumento falsus testis convincet?"

THE ORATION AGAINST PHORMIO.

THE ARGUMENT.

Chrysippus and his partner lent a sum of twenty minas to Phormio, a merchant, upon the following terms contained in a written agreement. Phormio was to take out a cargo of goods (value forty minas) from Athens, in a ship belonging to one Lampis, which was bound for Bosporus (or Panticapæum) in the Crimea. From Bosporus he was to bring a return cargo to Athens, and, if the ship arrived safe, he was to repay the money lent, together with a premium of six minas; the return cargo was to be deposited as security with the lenders, until the twenty-six minas were paid. Phormio bound himself to pay a penalty of fifty minas, in case he did not ship the return cargo. There appears to have been a clause giving him an option, instead of shipping a return cargo, to pay the money due under the contract to Lampis, the shipowner; and it would seem (though there is a good deal of obscurity in the matter), that in this event he was bound to pay something over the twenty-six minas by way of penalty, owing (we may suppose) to the increased risk run by the lenders, since Lampis, though he had a wife and children at Athens, was a foreigner and person of doubtful responsibility.

Such was the substance of this agreement, as far as we can make out from the statement of the orator. The reader should compare it with that which is set forth in the speech against Lacritus, which contains many similar terms. For a breach of this agreement an action is brought by Chrysippus and his partner against Phormio.

The plaintiffs in support of their case represent, that Phormio committed a fraud upon them in the outset by not taking from Athens a cargo of the stipulated value; that, when he arrived in Bosporus, having found no market for his goods, he was unable to purchase the return cargo, and informed Lampis to that effect; Lampis accordingly left Bosporus without him, but suffered shipwreck, losing his ship and all the goods that he had taken out, but saving his own life by the boat. When Lampis came to Athens, he reported these facts to the plaintiffs, and they, relying on his report, sued Phormio upon the agreement soon after his return to Athens. The parties agreed to refer the case to an arbitrator, before whom Lampis appeared as a witness, and, having been previously tampered with by Phormio, told an entirely different story, representing that Phormio had paid him in Bosporus the money due to the plaintiffs under the agreement, and that he was not in his right mind when he made his

first report to Chrysippus. The arbitrator, not liking to decide the case, sent it to be tried by a jury.

The defence relied on by Phormio may be gathered from what has been already stated. He alleged that he had satisfied the terms of the agreement by his payment to Lampis. The plaintiffs say, that he originally set up the shipwreck as his defence, but afterwards abandoned this point, because the facts were so notorious; and it could not be questioned in point of law, that the loss of the ship would not discharge him from his liability, unless he had shipped a return cargo. If however the alleged payment to Lampis at Bosporus was a good discharge under the agreement, the loss of the ship became immaterial, as regards Phormio, though it might perhaps have been important as affecting the liability (if any) incurred by Lampis to the plaintiffs. In this case the main question was, whether the money was really paid to Lampis or not; and the plaintiffs urge various arguments to prove that the payment never was made.

The defendant raised also a technical objection by special plea, similar to that in the case of Zenothemis, viz. that a mercantile action did not lie under the Athenian law, because there was no subsisting contract between the plaintiffs and himself. To this the plaintiffs reply satisfactorily enough, that the objection was admissible only where there had been no contract at all, not where the defence was that the terms of the contract had been performed; for such a defence as that there was no occasion for a special plea.

As the case was brought to trial upon the special plea, the defendant began, and the speech which follows was spoken by the plaintiffs in answer to the defendant's opening. It appears that each of the plaintiffs addressed the jury in turn, Chrysippus delivering the first half of the speech, and his partner the latter half.

We gather from internal evidence, that the date of this oration was about two or three years after the capture of Thebes by Alexander, at which time Demosthenes, having no political matters to attend to, had leisure to resume his old occupation of a speech-writer.

I SHALL ask you, men of the jury, only what is just; to hear us, as we take our turns of addressing you, with good will, considering that we are persons wholly inexperienced in law, and, though we have for a long time frequented your mart of commerce and advanced loans to various people, we have never until now appeared in any lawsuit before you, either as plaintiffs or defendants. And be assured, men of Athens, we should not now have commenced our action against Phormio, if we believed that the money which we lent him had been lost in the shipwrecked vessel: not so devoid are we of shame, nor so unaccustomed to sustain losses. But as many people reproached us, and especially the merchants who were in Bosporus with Phormio, who knew that he had

not lost his money in the wreck, we thought it would be cowardly not to seek redress for the wrong which the defendant had done us.

With regard to the special plea, I shall be very brief. These men do not absolutely deny that there was any contract on your exchange, but say that there is no contract still subsisting against them, because they have committed no breach of the terms in the agreement. Now the laws, according to which you have to decide, do not use this language: they allow the defence to be pleaded, when there has been no contract at Athens or to the Athenian port; but if a man, admitting that there was a contract, contends that he has performed all the terms of it, they require him to make his defence on the merits, not to raise an objection by pleading.[1] However, I doubt not that by the facts of the case I can show the action to be maintainable. Pray consider, O Athenians, what is admitted by these men themselves, and what is disputed: that will be the best way to try the question. They admit that they borrowed the money and that they secured the loan by an agreement; but they say that they paid the gold to Lampis, the servant of Dion, in Bosporus. We shall show, not only that he never paid, but that it was not even lawful for him to pay.[2] It is necessary to explain to you a few things that happened at the outset.

I, men of Athens, lent to Phormio the defendant twenty minas upon a voyage to Pontus and back, on the security of the single cargo,[3] and I deposited an agreement with Cittus

[1] Literally "not to accuse the plaintiff"—because by the practice, when the defendant raised an objection by plea to the admissibility of the action, or pleaded (as we might say) to the jurisdiction, he became a sort of plaintiff or *actor*.

See Vol. III. Appendix ix. page 378.

The reader will perceive how difficult, and often impossible, it is to convert the legal expressions into our own language.

[2] This they do not show, but seem to admit the contrary.

[3] If the text be correct, I think that Seager has indicated the true explanation. The transaction between Chrysippus and Phormio was this: the loan with interest was to be repaid at Athens if the ship returned safe, and the goods purchased by Phormio in the foreign port and brought home to Athens were to be delivered to Chrysippus as security until payment. The goods taken out by Phormio were not (strictly speaking) a security, because neither Chrysippus at Athens nor his agent in the foreign port was to exercise any control over them, so

the banker. The agreement requiring that he should lade the ship with a cargo of the value of four thousand drachms, he does a most scandalous thing; he immediately borrows fresh sums in the Piræus unknown to us, four thousand five hundred drachms from Theodorus the Phœnician, and a thousand from the shipowner Lampis. And when he ought to have purchased at Athens a cargo worth a hundred and fifteen minas, if he meant to perform to all his creditors the covenants contained in their agreements, he purchased only a cargo of five thousand five hundred drachms, including the victualling; his debts being seventy-five minas. Such was the commencement of his fraud, men of Athens; he neither furnished the security, nor put a cargo on board to the amount of the loan, although the agreement positively required him to do so. Here, take the agreement:

[*The Agreement.*]

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as to prevent Phormio from disposing of them as he pleased, although the agent was directed by Chrysippus to keep an eye upon them and to watch Phormio's proceedings. Therefore the money is said to have been lent on the security of the return cargo only. It is true that the outward cargo, if duly shipped, was in one sense a security to Chrysippus, as it showed that his money's worth was on board, and it enabled Phormio to purchase the goods to be hypothecated under the agreement. But it was not a security in the strict sense of the words in the present clause.

Schäfer objects that *ἑτέρα* cannot be used in this sense without the article, but when we look at the well-known opposition between the expressions *ἑτερόπλοος* and *ἀμφοτερόπλοος*, it is not improbable that in the language of merchants the addition of the article would not be necessary to convey the sense supposed.

Pabst, who translates these words, "mit einem zweiten Pfandrechte," writes in a note as follows:—"Möglich wäre es, die Stelle von einer Nachhypothek zu verstehen. Jedoch erklärt Platner, Att. Prozess. II. S. 354. das *andere Pfand* für eine weitere Hypothek, ausser den geladenen Waaren."

Penrose, in his edition of this oration, is inclined to adopt Reiske's first interpretation, viz. that *ἑτέρᾳ* is equivalent to *ἑτέρᾳ τοσαύτῃ*—"security to double the amount." He writes thus:—

"I do not think the objection to Reiske's first way of taking it insuperable, which makes by far the best sense. Compare in the next speech, at the end of p. 928, *ἐδανείζοντο παρ' ἡμῶν τὰς τριάκοντα μνᾶς, ὡς ὑπαρχούσης αὐτοῖς ὑποθήκης ἑτέρων τριάκοντα μνῶν, ὥστ' εἰς τάλαντον ἀργυρίου τὴν τιμὴν εἶναι τοῦ οἴκου καθισταμένην.* There is still a fourth way in which it may be understood, *on a renewed security.*"

Now take the entry of the customs-officers and the depositions:

[*The entry of the customs.*]

[*The Depositions.*]

When he arrived at Bosporus, having letters from me, which I gave him to deliver to my servant, who was passing the winter there, and to a certain partner, to whom I had written apprising them of the sum which I had lent and the security, and desiring them, as soon as the goods were unshipped, to inspect and keep an eye upon them, the defendant does not deliver the letters which he had received from me, so that they might know nothing of what he was doing; and finding business in Bosporus very slack, on account of the war which had broken out between Parisades and the Scythians, and hardly any market for the cargo which he had brought, he was in great embarrassment; for the creditors pressed him, who had lent on the outward voyage. When therefore the shipowner required him according to the agreement to ship the goods purchased with my money, this man who now says he has paid the debt replied, that he could not ship my goods, because his stuff[1] was unsaleable; and he desired him to put to sea, and said that he himself would leave in another ship when he had disposed of his cargo.

Please to read this deposition:

[*The Deposition.*]

After this, men of Athens, the defendant was left in Bosporus; Lampis put to sea, and was shipwrecked not far from the port; for after his ship had already been overloaded, as I am informed, he took upon the deck a thousand hides, which in fact caused the loss of the vessel. He himself was saved in the boat with the other servants of Dion; but he lost more than three hundred lives,[2] besides the cargo. There

[1] *ῥῶπος* is described as "omne genus mercis vilioris," and Reiske's notion is not unfounded:—"vocabulum fastidii et contemptus satis decet stomachum mercatoris a frigore mercium suarum offensi."

[2] Penrose, in his edition of this speech, has the following note, communicated by a naval friend:—

"It is difficult to account for so large a number, unless we suppose these to have been slaves, of which a great supply came from Thrace. It must not be supposed that a ship large enough to carry three hundred slaves, at a time when there was no motive for stowing them

was much grief in Bosporus, when they heard of the loss of the vessel; everybody said how lucky this Phormio was, that he had not gone out with the other passengers or embarked anything in the ship: and Phormio expressed himself to the same effect as the rest. Read me these depositions:

[*The Depositions.*]

Lampis himself, to whom he says he paid the gold, (pray attend to this,) as soon as he returned to Athens after the shipwreck, upon my going and asking him about these matters, said that Phormio did not ship any goods according to our agreement, and that he had not received the cash from Phormio in Bosporus. Read me the deposition of the persons who were present:

[*The Deposition.*]

When the defendant Phormio had returned to Athens, (he arrived in another ship,) men of the jury, I went to him and demanded payment of the loan. And at first, men of Athens, he never made the statement which he now makes, but always promised to pay: but, after he had been talking with these people who are now backing and supporting him, he was no longer the same person, but quite different. When I perceived that he was endeavouring to cheat me, I went to Lampis and told him, that Phormio was not doing the right thing, and not intending to pay his debt; at the same time I asked him if he knew where Phormio was, that I might give him a summons. He desired me to follow him, and we find the defendant by the perfumers' shops; and I, having witnesses with me, summoned him: and Lampis, men of

as close as at present, would feel the weight of a thousand hides. The loss of the ship is rather to be accounted for by the top-hamper which a thousand hides being stowed on deck in addition to the cargo would occasion,—for even now vessels are frequently placed in jeopardy, and many have been lost, from what is termed the deck load. In this case the hamper would not arise so much from the weight as the bulk of the hides, which would hold much wind, as well as alter the trim."

I subjoin an extract from Abbott on Shipping:—

"The French Ordinance in express terms excludes from the benefit of general average goods stowed upon the deck of the ship; and the same rule prevails in practice in this country. Goods so stowed may in many cases obstruct the management of the vessel, and, except in cases where usage may have sanctioned the practice, the master ought not to stow them there without the consent of the merchant."

Athens, was close by when he was summoned, and never ventured to say that he had received the cash from the defendant—never said, as one might have expected—"Chrysippus, you're mad! what are you summoning this man for? he has paid me the money." And not only did Lampis never open his lips; but the defendant himself did not think proper to say a word, though Lampis was present, to whom he now declares he has paid the money. Surely, men of Athens, it was natural for him to say—"What are you summoning me for, man? I have paid the money to this person who is standing here"—and at the same time to call on Lampis to vouch for him. However, neither of them uttered a syllable on that occasion. To prove the truth of my statements, take the deposition of the persons who witnessed the summons:

[*The Deposition.*]

Now take the plaint in the action which I commenced against him last year. It is one of the strongest proofs that up to that time Phormio never said he had paid the money to Lampis:

[*The Plaint.*]

This action I commenced, men of Athens, upon no other ground than the report of Lampis, who denied that Phormio had shipped the goods or paid him the money. Don't suppose, men of Athens, that I am so senseless, so utterly mad, as to have drawn such a plaint as this, when Lampis (who must have disproved my case) admitted that he had received the money.

Again, men of Athens—here is another point. These men themselves put in a special plea last year, and did not venture to assert in the plea that they had paid the money to Lampis. Take this special plea:

[*The Special Plea.*]

You hear, men of Athens. It is nowhere averred in the special plea, that Phormio had paid the cash to Lampis, although I had carefully inserted in the plaint, which you heard just now, that he neither shipped the goods nor had paid the money. What other witness then need you look for, when you have so strong a piece of evidence from these men themselves?

When the cause was near coming on for trial, they begged me to refer it to some one; and we referred to Theodotus, a denizen,[1] under articles of submission. And Lampis after that, thinking it would be safe for him to give any evidence that he pleased before an arbitrator, having divided my money with the defendant Phormio, stated in evidence the very contrary of what he had said before. For it is not the same thing, men of Athens, to give false testimony face to face with a jury, and to do so before an arbitrator. With a jury there is severe displeasure and punishment in reserve for those who bear false witness; but before the arbitrator they give what testimony they please without risk or shame. Upon my expressing strong indignation at the audacity of Lampis, and producing to the arbitrator the same evidence which I now produce to you, men of Athens, that of the person who originally went to him with me, when he said that he had not received the cash from Phormio, and that Phormio had not shipped any goods—Lampis, when so overwhelming a case of perjury and roguery was made out against him, confessed to the arbitrator that he had made this statement, but said he was out of his senses when he made it. Please to read this deposition.

[*The Deposition.*]

Theodotus,[2] O Athenians, having heard us several times, and believing that Lampis gave false testimony, did not dismiss the suit, but referred us to the court of justice; for he did not like to decide against Phormio the defendant, on account of his intimacy with him, as we afterwards heard, and he was afraid to dismiss the suit, lest he should himself commit perjury.

Consider now in your own minds, men of the jury, looking at the facts of the case, what means the defendant was likely to have to pay the money. He sailed from hence without

[1] See Volume III. Appendix iii. page 253.

[2] Here, according to Libanius, commences the address of the second speaker. Schäfer, however, thinks it more probable that the second speech commenced with the words ἐξ αὐτοῦ δὴ τοῦ πράγματος, which occur seven lines below (the next paragraph in this translation). Thus, he observes, the main facts of the case, with the evidence bearing upon them, are stated by Chrysippus; the circumstantial proofs and arguments are dealt with by his partner.

having shipped the amount of my loan, and having no equivalent security; in fact, he had obtained further loans upon the credit of mine. In Bosporus he found no market for his cargo, and with difficulty got rid of the creditors who had lent on the outward voyage. And Chrysippus lent him two thousand drachms on the voyage out and home, on the terms that he should receive at Athens two thousand six hundred drachms; but Phormio says that he paid to Lampis in Bosporus a hundred and twenty Cyzicene staters,[1] (pray attend to this!) having borrowed them at interest on real security. Now, interest on real security was sixteen and two-thirds per cent.,[2] and the Cyzicene stater was equivalent there to twenty-eight Attic drachms. You should be informed how large a sum he says he has paid. A hundred and twenty staters make three thousand three hundred and sixty drachms, and the sixteen and two-thirds per cent. land-interest upon thirty-three minas sixty drachms is five hundred and sixty drachms, and the whole sum is the amount of the two.[3] Now, men of the jury, is there or ever will there be a man in the world, who, instead of two thousand six hundred drachms, would prefer to pay thirty-three minas sixty drachms, and interest on his loan, five hundred and sixty drachms, which sums Phormio says he has paid to Lampis, amounting in the whole to three thousand nine hundred and twenty drachms? —And when he was at liberty to pay the money at Athens, it having been lent upon the voyage out and home, has he paid it in Bosporus, augmented by thirteen minas?—And to the creditors who lent on the voyage out you could scarcely pay their principal, though they were at sea with you and continually pressing you; yet to this man, who was not present, you not only returned his principal and interest, but paid also the penalties of the agreement, when you were under no necessity!—And you did not fear those persons, to whom

[1] The stater was a gold coin. The ordinary stater was equal in value to twenty Attic drachms.

[2] ἔφεκτος τόκος, one-sixth of the principal, or $16\frac{2}{3}$ per cent. All this subject is explained by Böckh, in his Public Economy of Athens, page 123, &c. Ed. II And a compendium will be found, under title *Fenus*, in the Archæological Dictionary.

[3] *I.e.* 39 minas 20 drachms; which he says (not with strict correctness) Phormio pretended to have paid Lampis: including in the amount the interest on the money which he borrowed to pay him.

their agreements gave the right of demanding payment in Bosporus; yet pretend to have regarded the claims of this man, who alleges that you defrauded him in the very outset, by not shipping his money's worth of goods according to your agreement from Athens! And now that you are come to the port where the loan was advanced, you do not scruple to cheat the lender; yet you pretend that you did more than justice in Bosporus, where you were not likely to be punished! And other people who borrow on the voyage out and home, when they are about to sail from the port, get witnesses to attend, and bid them take notice that the goods are shipped at the risk of the lenders; but you rely upon the single testimony of your accomplice in fraud; you did not have with you in Bosporus either my servant or my partner, nor did you deliver to them the letters which I gave you, and which contained a direction to watch all your proceedings! Why, men of Athens, what is a person not capable of doing, who has received papers and not delivered them in due and regular course? Or how can you avoid seeing this man's knavery from his actions? Surely (O earth and heaven!) it was his business, when he paid so large a sum, and more than he owed, to make it notorious on the Exchange, and call everybody to be present, especially this man's servant and his partner. For of course you are all aware, that people borrow with a few witnesses, but, when they pay, they procure many witnesses to attend, in order that they may appear to be honest men in discharging their obligations. But when you, Phormio, were paying both the debt and the double interest, after having used the money on the single voyage, and were giving thirteen minas besides, were you not clearly bound to have many witnesses in attendance? Had you done so, no merchant would have been regarded with more admiration than you. As it is, however, instead of procuring many witnesses to the transaction, you endeavoured to hide yourself from all the world, as if you were doing something wrong. Again, had you been making payment to me your creditor in person, there was no occasion for witnesses, because you would have taken up the agreement and got rid of the obligation; but when you were paying not to me, but to another on my behalf, and not at Athens but in Bosporus, and when your agreement was deposited at Athens

and with me, and when the person to whom you paid the gold was mortal and about to navigate such a length of sea, do you mean to tell us that you brought no witness, neither slave nor freeman? Yes, he will say, because the agreement required me to pay the cash to the shipowner.[1] Aye, but it did not prevent you from getting witnesses to attend, or from delivering the letters. And these parties drew up two agreements[2] with you in respect of the loan, implying that they distrusted you to the utmost: yet you assert that there was no one else present when you gave the gold to the shipowner, though you knew that there was an agreement deposited against you at Athens with this man.

He says, that the agreement requires him to pay the money if the ship is brought home safe. Yes, for it requires you also to put the goods which you have purchased on board, or, in default, to pay a penalty of five thousand drachms.[3] You do not notice this part of the agreement, but after having violated its terms from the very beginning, and failed to ship the goods, you raise a question upon one expression[4] in the agreement, though you have by your own

[1] Wolf asks with astonishment, how, if this statement be correct, the money could have been lent on the voyage out and home, and answers his own question by suggesting that the statements of orators are never to be depended upon. I transcribe the concluding part of the note for the reader's amusement:—"Me sane (verum ut fatear) pœnitet tantum operæ in rhetorum mendaciis convertendis posuisse. Verum aliquam excusationem habeo vel ignorantiæ vel inopiæ. Nam quod ad meum ingenium attinet, hypocritas, sophistas, sycophantas, mendaces magos (adderem etiam tyrannos, nisi metus hos faceret amabiles,) omnes ex animo detestatus sum a teneris unguiculis; et nunc canis subolescentibus mihi quam minimum cum eis esse negotii cupio."

The present difficulty is solved by supposing that Phormio had the option of paying the money to Lampis, if he did not choose to ship any goods from Bosporus to Athens. See the Argument.

[2] The agreement was made in duplicate, and a copy given to each of the plaintiffs.

[3] This (as I understand it) was the penalty to which Phormio was bound, in case he neither shipped the goods at Bosporus nor paid the stipulated sum to Lampis. The penalty before mentioned was that which attached if the money was paid to Lampis. See the Argument.

[4] The plaintiff supposes Phormio to be setting up that clause in the agreement which provided that the money should only be payable if the ship came home; and he replies: "This clause is not to be taken alone, but in connexion with the clause which required you to ship the

acts rendered it a nullity. For when you say that you did not ship the goods in Bosporus, but paid the gold to the shipowner, why do you talk any further about the ship? for you have not partaken of the risk, as you put nothing on board. And at first, men of Athens, he had recourse to this excuse, pretending that he had shipped the goods; but as the falsehood was likely to be established in many ways, as well by the entry of the Harbour-masters in Bosporus, as by the persons who were staying in the port at the same time, he changes his tack, enters into a conspiracy with Lampis, and asserts that he has paid him the money, taking advantage of the circumstance that the agreement required it, and thinking that we should not easily disprove a transaction which took place between themselves alone. And Lampis declares, that what he said to me[1] before he was corrupted by the defendant was spoken in a fit of derangement; but since he has divided my money, he is no longer deranged, he says, but remembers everything perfectly.

If Lampis had shown contempt for me only, men of the jury, it would not have been at all surprising; but he has acted far more shamefully to all of you. For when Parisades had issued a proclamation in Bosporus, that whoever wished to carry corn to Athens and into the Athenian port might export the corn free of duty, Lampis, who was staying then in Bosporus, got the liberty to export corn and the exemption from duty in the name of your state, and having laden a large vessel with corn, carried it to Acanthus and there disposed of it, employing my money for the purpose in concert with the defendant. And this he did, men of the jury, though he was dwelling at Athens, and had a wife and children here, and though the laws have denounced the severest penalties against any person dwelling at Athens, who carries corn to any other place than to the Attic port; and he did it on an occasion when such of you as dwelt in the city were having meal measured out to them in the Odeum, and those who dwelt in Piræus were receiving loaves at an obol (one each) in the dockyard and in the long porch, and

return cargo. If you shipped no goods, there was no risk run, and the clause in question does not apply."

[1] The speaker must have been with Chrysippus when Lampis made his first statement.

were having their meal measured out to them by the gallon,[1] and treading upon one another's heels. To prove the truth of my statements, please to take the deposition and the law.

[*The Deposition. The Law.*]

It is by the aid of this man as his accomplice and witness, that Phormio thinks proper to defraud us of our money—us, who have never ceased bringing our corn to your port, and who in three critical periods of your commonwealth, in which you proved the men who were useful to the people, have each time behaved ourselves worthily of the occasion. First, when Alexander marched to Thebes, we made you a present of a talent in money. Again, when corn rose in price the time before, and had got to sixteen drachms, we imported more than ten thousand medimns of wheat, and measured it out among you at the average price, five drachms the medimn, and you all know that you received this distribution in the Pompeum.[2] And last year my brother and I gave a donation of a talent to purchase corn for the people. Read me the depositions in proof of these statements.

[*The Depositions.*]

If any further inference may be drawn from these facts, it was not very likely that we should make donations of such large sums in order to acquire a good name with you, and should make a false charge against Phormio, in order to throw away the honourable character which we had established. It is right therefore that you should give us redress, men of the jury. I have shown you that the defendant in the beginning did not ship goods equivalent to the loans which he had obtained at Athens, and that out of the goods which were sold at Bosporus he with difficulty satisfied the creditors who lent on the voyage out. I have further shown that he was neither well-off, nor so simple-minded as to pay thirty-nine minas instead of two thousand six hundred drachms. Besides this, I have shown that, when he says he paid the money to Lampis, he did not invite either my servant or my partner (who was in Bosporus) to be present. Again, Lampis himself

[1] The *ἡμίεκτον* was the twelfth part of a *μέδιμνος*, which was nearly a bushel and a half.

[2] This was a public building at Athens, in which the sacred utensils were kept.

is shown to have been a witness for me that he had not received the money, before he was corrupted by the defendant. Really, if Phormio could thus prove his case point by point, I don't know how he could possibly have made a better defence. As to the action being maintainable, the law itself bears witness in my favour, when it declares that mercantile actions shall lie upon contracts made at Athens and to the Athenian port, and not only those at Athens, but those also which are made for the purpose of a voyage to Athens. Please to take the laws.

[*The Laws.*]

That the contract has been entered into between me and Phormio at Athens, even they themselves do not deny; but they put in a special plea alleging that the action is not maintainable. To what tribunal could we bring our case, men of the jury, except to the tribunal of Athens, where we entered into the contract? It would be strange indeed that, if a wrong had been done me in relation only to a voyage to Athens, I should be able to obtain justice from Phormio before you, and yet, when the contract has been made on your exchange, these men should not submit to your jurisdiction. And, when he referred to the arbitration of Theodotus, they admitted that my action against them was maintainable; but now they assert the opposite to what they have themselves before conceded, as if it were proper that they should be tried before Theodotus the denizen without a special plea, but, when we enter the court of the Athenian state, the action is no longer maintainable. I am thinking, what in the world he would have inserted in his plea, if Theodotus had dismissed the suit, when, Theodotus having desired us to go to the court, he says that the action is not maintainable before you, to whom Theodotus sent the case. I should indeed be most cruelly treated, if, when the laws declare that actions upon contracts made at Athens shall be brought before the Judges, you, who have sworn to decide according to the laws, should dismiss the suit.

That I lent the money is proved, you see, both by the agreement and by the defendant himself; that he has paid me is testified by no one besides Lampis his accomplice. And the defendant vouches no one but Lampis to prove the

payment; I vouch both Lampis himself and those who heard him, to prove that he denied having received the money. Phormio then is at liberty to bring my witnesses to trial, if he disputes the truth of their testimony; but I have no means of dealing with his witnesses, who say they know that Lampis testified to having received the money. If the deposition of Lampis had been put in the box, these men might have said perhaps, that I ought to proceed against him for false testimony; as it is, however, I have not this deposition, and the defendant thinks fit to secure his own impunity, by leaving no pledge for the verdict which he urges you to pronounce. Would it not be absurd, when Phormio himself confesses to have borrowed and pretends to have paid, that you should make a nullity of what he himself confesses, and give effect to what he disputes? and when Lampis, on whose testimony the defendant relies, after originally denying that he had received the money, now gives evidence to the contrary; that you, who know that he has never received payment, should not be witnesses to the fact? and that you should not accept for proof what he spoke truly, but rather place reliance upon the false statements which he made after he was corrupted? It is far more just, men of Athens, to draw your conclusions from the statements made in the first instance, than from those fabricated afterwards. The former he made not designedly, but under the impulse of truth; the later are fictions devised for his own advantage.

Remember, O Athenians, that Lampis himself never denied having said that he had not received the money, but, while he admitted that he said it, declared that he was not in his right senses at the time. It would be out of reason that you should credit that part of his testimony which favours the cheat, and refuse credence to that which favours the party cheated. I implore you, men of the jury, not to act thus. You are the same persons who punished with death, after his impeachment before the popular assembly, a man who had obtained fresh loans[1] to a large amount upon your

[1] *I.e.* new loans on the security of property already pledged. This was considered at Athens to be a fraud upon the prior, as well as the subsequent lender; for it increased the risk to both. And it was commonly provided against by express stipulation. See the agreement in the case against Lacritus; and see what Demosthenes says, with

exchange and did not provide for his creditors their securities, although he was a citizen of Athens and the son of a man who had been a General. For you hold that persons of that kind not only injure those who chance to deal with them, but do a public damage to your place of trade; and you hold thus with justice. For the trading community thrive not so much by the borrowers as by the lenders of money, and neither ship nor shipowner nor passenger can put to sea without the assistance of the lenders. The laws have many excellent regulations for their protection. It is your duty to come forward in aid of the laws, and give no encouragement to roguish people, so that you may derive the utmost advantage from your trade-market. You will do so, if you protect the persons who risk their money, and do not suffer them to be defrauded by such monsters as these.

I have said all that was in my power to say, and I will call another of my friends, if you desire it.

THE ORATION AGAINST LACRITUS.

THE ARGUMENT.

The present case arose out of a written agreement entered into between Androcles, an Athenian, and Nausicrates, of Carystus in Eubœa, of the one part; and Artemo and Apollodorus, both of Phaselis in Pamphylia, and brothers of the defendant Lacritus, of the other part. It was an agreement of loan on a mercantile adventure, upon the terms following:

Androcles and Nausicrates lend thirty minas to Artemo and Apollodorus, on condition that they should sail in a certain vessel from Athens to Mende or Scione (towns in the peninsula of Pallene), and there purchase three thousand casks of Mendæan wine; from thence proceed to the Thracian Bosporus, or, if they pleased, along the left coast of the Euxine as far as the mouth of the Borysthenes (or Dnieper); and, after selling their cargo of wine, purchase a return-cargo, to be brought in the same vessel to Athens. The loan was to be repaid with interest, in case the cargo was brought safe to

reference to a pledge actually deposited, in the speech against Aphobus (*ante*, page 100). But the securities given on these maritime adventures were not like pledges accompanied with possession, or mortgages with delivery of title-deeds. They afforded but scanty protection against bad faith and neglect of duty.

Athens, within twenty days after its arrival, the interest to be twenty-two and a half per cent. unless they returned from the Euxine to Hierum in Bithynia after the rise of Arcturus (early in September), in which case it was to be thirty per cent. No abatement was to be allowed except for jettison made with the consent of all the passengers, or for compulsory payments made to enemies. The return-cargo was to be delivered as security to the lenders, to be held by them until payment of all that was due; and in default of payment, they were to be at liberty, both or either of them, not only to sell the security, but to recover any deficiency by distraining the other property of the borrowers. If, instead of entering the Euxine sea, they remained in the Hellespont for ten days after the rise of the Dog-star, (at the end of July,) and there discharged their cargo, which they were at liberty to do in any friendly port, it was agreed that they should pay the lower rate of interest. There was the usual declaration by the borrowers, that the security which they gave was not encumbered with any previous hypothecation, and an engagement that they would not take up any further loan upon it.

It is stated by Androcles, the speaker, that this agreement was violated in several ways by the borrowers; that they failed to ship the stipulated quantity of wine; that they took up a further loan upon the security given to himself and his partner; that they did not purchase a sufficient return-cargo; that, instead of entering into the regular port of Athens, they put into a creek used only by thieves or smugglers; and, when the creditors demanded their money, they and their brother Lacritus falsely represented that the vessel had been wrecked.

Artemo having died shortly after this, and Lacritus having (as the plaintiff asserts) inherited his property, and therefore succeeded to his obligations, Androcles, either on his own behalf or on behalf of himself and partner, commences an action against Lacritus, as heir to his brother, to recover what was due to him under the agreement. This is the principal, but not the only ground, on which the plaintiff founds his claim against Lacritus; for he alleges also that Lacritus guaranteed the performance of the agreement by his brothers, and asserts that he joined in the sealing of it.

Lacritus puts in a special plea, objecting that there was no contract, or at least no contract in writing between the plaintiff and himself. There does not appear to have been any law at Athens, as there is with us, requiring guarantees to be in writing; but the defendant relied upon the law concerning mercantile actions, of which an account has already been given in the argument to the case of Zenothemis. (See *ante*, p. 150.) Whether the plea would be available in such a case as this is very doubtful. One would rather suppose that the heir or the surety of the contracting party would be liable to the same sort of action as the deceased or the principal.

It is observable that the evidence produced by the plaintiff is confined entirely to the proceedings of Artemo and Apollodorus, the original parties to the agreement, and not a particle of evidence is offered to fix Lacritus with liability either as heir or surety. Lacritus has already spoken; he has admitted that he was his brother's heir, but

has denied that he succeeded to any property, that he had any assets (as we should say). The plaintiff asserts that he actually took possession of his brother's estate, and administered it, and only pretended to renounce the inheritance when a demand was made on him by creditors. But of this important fact, on which, perhaps, the whole case turned, no proof is offered. The guaranty also rests upon loose assertion. The speech is altogether rather abusive than argumentative. It has been surmised that Demosthenes may have been severe upon Lacritus because he was an orator and pupil of Isocrates. He is probably the same person whom Plutarch mentions in the Life of Demosthenes, as having been the instructor of that Archias who was employed by Antipater to capture the Athenian orators.

I have taken it for granted that Nausicrates, the joint-creditor mentioned in the agreement, was not a co-plaintiff with Androcles, as it is nowhere stated that he was so; and I think it by no means clear that the joint-debtor Apollodorus was sued with Lacritus, notwithstanding one passage in the oration which seems to indicate the contrary. If the reader should think this strange, let him remember that by the terms of the agreement it appears that the contract between the parties was joint and several; it was competent for either or both of the lenders to take legal proceedings against either or both of the borrowers; and therefore it may be inferred that either or both of the lenders might sue the surety of the borrowers, or the heirs of either.

A full explanation of the agreement will be found in Böckh's Public Economy of Athens, and a compendium, taken from Böckh, in the Archæological Dictionary, title *Fenus*. Some information illustrative of the subject will be found in Appendix V.

From this and the foregoing cases the reader may perceive what risk was run by the Athenian capitalist who lent his money on maritime speculations, and how little dependence could be placed on such persons as Protus, Phormio, Artemo, and Apollodorus, who traded on borrowed money, with little or no property of their own to fall back upon.

The Phaselites are doing nothing new, men of Athens, but only what they are in the habit of doing. They are famous people for borrowing money on your exchange, but, when they have got it and drawn up a maritime contract, they immediately forget both their contract and the laws, and also that it is their duty to repay what they have had, and consider that, if they pay their debts, it is like losing something of their own, and, instead of paying, they invent artifices and pleadings and excuses, and are the greatest rogues and rascals in the world. Here is the proof. Out of the multitude of persons, Greeks and barbarians, who frequent your exchange, the Phaselites alone have more lawsuits year after year than all the rest put together. So much for their

character. I, men of the jury, having lent money to Artemo, the defendant's brother, according to the commercial laws, on an adventure from Athens to Pontus and back, as he died without having repaid me the money, have brought the present action, according to those same laws under which I entered into the contract, against the defendant, as being brother of Artemo and having possession of all his property, both what he left here and what he had at Phaselis, and as being heir to his whole estate; and because the defendant can show no law which enables him to keep possession of his brother's property and to have administered it as he pleased, and yet to refuse payment of what is due to other persons, and to say now that he is not heir but renounces the inheritance. Such is the base conduct of Lacritus the defendant. I entreat you, men of the jury, to give me a fair hearing upon this matter; and, if I prove that he has wronged us his creditors and you as well, to give us the redress that we are entitled to.

I myself, men of the jury, had not the least knowledge of these men; but Thrasymedes, the son of Diophantus, the Sphettian, and Melanopus, his brother, are friends of mine, and we are as intimate as it is possible to be: they came to me with Lacritus, the defendant, having become acquainted with him some way or other (I don't know how), and asked me to lend a sum of money upon an adventure to Pontus to Artemo, the defendant's brother, and Apollodorus, so that they might be profitably employed; Thrasymedes, men of the jury, knowing nothing of the roguery of these persons, but thinking that they were honest men and what they pretended and professed to be, and supposing that they would do all that Lacritus, the defendant, promised and undertook that they should do. He was completely deceived, and had no idea with what monsters he was associating. I, by the persuasion of Thrasymedes and his brother, and, upon an undertaking being given to me by the defendant Lacritus, that his brothers would do all that was right, in conjunction with a certain friend of mine, a Carystian, lent thirty minas in money. I wish you, men of the jury, first to hear the agreement, which contains the terms on which we lent the money, and the witnesses who were present when it was lent; after that, I will proceed to the other parts of the case, and

show you the outrageous tricks which they have played in the affair of the loan. Read the agreement, and after that the depositions.

THE AGREEMENT.

"Androcles of Sphettus and Nausicrates of Carystus have lent to Artemo and Apollodorus, both of Phaselis, three thousand drachms in silver from Athens to Mende or Scione, and thence to Bosporus, or, if they please, on the left coast as far as the Borysthenes, and back to Athens, at interest of two hundred and twenty-five for the thousand; but, in case they should sail out of Pontus to Hierum after the rising of Arcturus,[1] at interest of three hundred for the thousand, on the security of three thousand casks of Mendæan wine, which shall be conveyed from Mende or Scione in the twenty-oared vessel of which Hyblesius is the owner. They hypothecate these goods, not owing upon them any money to any other

[1] The following note is taken from Penrose:—

"After the rising of the star Arcturus, which in Hesiod's time took place sixty days after the solstice (Opera et Dies, 566). According to Ptolemy it was on the second of September. The discrepancy is thus explained by Captain Smyth:—'The difference in the rising of Arcturus is the effect of the precession of the equinoxes—54¼″ annually, and from Hesiod's mention of when it took place in his time, the important chronological point of his age is gained. The star, however, though fine, was reckoned ungenial in its influences; and the change between the summer and autumnal Etesian winds being precursed by eight or ten days of squally weather, the *prodromi* of old, was ascribed to the direct power of Arcturus, instead of the alternation consequent upon the solar march. The times of the periodical changes of the Etesiæ are still objects of concern.' Gibbon, Vol. I. c. x., says, referring to *Voyages de Chardin*, Tom. I. p. 45, 'To navigate the Euxine before the month of May, or after that of September, is esteemed by the modern Turks the most unquestionable instance of rashness and folly.' —Compare

Præterea tam sunt Arcturi sidera nobis
Hædorumque dies servandi, et lucidus Anguis,
Quam quibus in patriam ventosa per æquora vectis
Pontus et ostriferi fauces tentantur Abydi.—Virg. Georg. I. 204.

"The same caution seems to have prevailed in the Eastern part of the Mediterranean. Compare Acts xxvii. 9, where, the vessel being on the coast of Crete, it is said, καὶ ὄντος ἤδη ἐπισφαλοῦς τοῦ πλοὸς, διὰ τὸ καὶ τὴν νηστείαν ἤδη παρεληλυθέναι, that is, the day of Atonement, on the tenth day of the Jewish month Tisri, which fell in that year, according to Burton, on the 19th of September."

person, nor will they borrow anything further upon them And they shall bring back to Athens in the same vessel all the goods which they purchase in Pontus for the return-cargo. And, if the goods are brought safe to Athens, the borrowers shall pay to the lenders the money accruing due according to the agreement within twenty days after their arrival at Athens, without any abatement, except for jettison,[1] which the passengers have made by common resolution, or for pay ments made to enemies, but no deduction shall be allowed in respect of any other loss; and they shall deliver the security entire to the lenders, to be under their absolute control until they have paid the sum due under the agreement. And, if they do not pay it in the stipulated time, it shall be lawful for the lenders to pledge or to sell the security for such price as can be obtained; and, if there is any deficiency in the money which is due to the lenders under the agreement, it shall be lawful for the lenders, both or either of them, to levy the amount by execution against Artemo and Apollodorus, and against all their property, whether on land or sea, wheresoever they may be, in the same manner as if a judgment had been recovered against them and they had committed default in payment.[2] And if they do not enter Pontus, but stay ten days after the rising of the dog-star[3] in the Hellespont, and discharge their cargo in some place where the Athenians have no right of reprisals,[4] and thence return home to Athens, they shall pay the interest inserted for the previous year[5] in the agreement. And, if the ship in which the goods are conveyed should meet with any irretrievable disaster, the security shall be saved, if possible,[6] and whatever is recovered shall be

[1] See Appendix V.

[2] This provision is like our warrant of attorney to confess judgment.

[3] According to Ptolemy, the Dog-star rises July 28; according to modern observation, July 3.

[4] Commissions to make reprisals were granted much in the same way that letters of marque and reprisal are granted in modern times. See title *Sylæ* in the Archæological Dictionary.

[5] *I.e.* the lower rate of interest, "because by the time this condition would come into force it would be another year, the year beginning with Hecatombæon." So Penrose, citing Böckh. I can see no better explanation; but it would be clearer if we had *πρῶτον* instead of *πέρυσι*.

[6] *I.e.* for the benefit of the lenders. As the clause stands, I understand it to mean this: "Though the ship be lost, the lenders shall

the joint property of the creditors. And touching these matters nothing shall have greater effect than the agreement.

"Witnesses, Phormio of Piræus, Cephisodotus, a Bœotian, Heliodorus of Pithus."

Now read the depositions.

THE DEPOSITIONS.

"Archenomides, son of Archedamas, of Anagyrus, deposes that Androcles of Sphettus, Nausicrates of Carystus, Artemo and Apollodorus, both of Phaselis, deposited articles of agreement with him, and that the agreement is still remaining in his custody."

Now read the deposition of the persons who were present.

THE DEPOSITION.

"Theodotus, denizen, Charinus, son of Epichares, of Leuconium, Phormio, son of Cephisophon, of Piræus, Cephisodotus, a Bœotian, Heliodorus of Pithus, depose—that they were present when Androcles lent to Apollodorus and Artemo three thousand drachms in silver, and know that they deposited the agreement with Archenomides of Anagyrus."

On the terms of this agreement, men of the jury, I lent the money to Artemo, the defendant's brother, at the defendant's request, and upon his guaranteeing that I should have everything that I was entitled to under the contract of loan; and the defendant himself drew up the agreement, and joined in sealing it after it was drawn. For this man's brothers were younger than he was, and quite striplings: he was Lacritus the Phaselite, a great personage, a pupil of Isocrates; it was he who transacted all the business; and he

still have their security, viz., the hypothecated cargo, if it can be saved;"—(this harmonises with the previous clause *σαθέντων τῶν χρημάτων Ἀθήναζε ἀποδώσουσιν*, &c.)—"and whatever is recovered from the wreck shall be divided rateably among the creditors"—meaning not only the creditors under the agreement, but those who had lent money to carry home the cargo, or had a claim for salvage. If *τοῖς δανείσασιν* is confined to the parties to the agreement, I see no force in *κοινά*.

Schäfer thinks the text as it stands in Bekker corrupt, and would adopt the reading which is found in one respectable manuscript, *σωτηρία δ' ἔσται τῶν ὑποκειμένων, τὰ περιγενόμενα*, &c.

Pabst renders it—"so muss das Pfand gerettet werden. und was erhalten und gerettet wird gehört den Darleihern gemeinschaftlich."

desired me to look particularly to him, for he said that he himself would do everything that was right for me, and that he should stay at Athens, while his brother Artemo would go to sea to look after the goods. And at that time, men of the jury, when he wished to get the money from us, he said he was both the brother and the partner of Artemo, and used wonderfully persuasive language; but, as soon as they had got the money into their hands, that they divided, and converted it to what use they pleased; but not in any point, great or small, did they execute the articles of the maritime contract, under which they obtained the money, as the facts themselves prove. Lacritus, the defendant, was their adviser in all their proceedings. I will take the terms of the agreement, one by one, and show you that they have done nothing in fulfilment of them.

First it is written, that they borrowed the thirty minas from us upon three thousand casks [1] of wine, as if they possessed security for another thirty minas, so that the price of the wine would amount to a talent in money, including the expenses which had to be incurred for the vesselling and stowage of the wine; [2] and these three thousand casks were to be conveyed to Pontus in the twenty-oared ship of which Hyblesius was owner. Such, men of the jury, are the terms contained in the agreement which you have heard. These men however, instead of three thousand casks, put less even than five hundred on board the ship; instead of having bought the quantity of wine which they were bound to do, they made what use of the money they pleased; in fact, they never meant or intended to ship the three thousand casks according to the agreement. In proof of my statements, take the deposition of the fellow-passengers in the ship.

THE DEPOSITION.

"Erasicles deposes, that he was pilot of the ship of which Hyblesius was owner, and he knows that Apollodorus carried in the ship four hundred and fifty six-gallon casks of Mendæan wine, and no more; and that Apollodorus carried no other merchandise in the vessel to Pontus."

[1] Six-gallon casks. The κεράμιον contained 5 gallons 6·08 pints.

[2] Pabst: "Mit den Unkosten, welche die Aufbewahrung und Füllung des Weines verursachte."

"Hippias, son of Athenippus, of Halicarnassus, deposes, that he sailed on the same voyage in the ship of Hyblesius as supercargo[1] of the ship, and he knows that Apollodorus, the Phaselite, carried in the vessel from Mende to Pontus four hundred and fifty six-gallon casks of Mendæan wine, and no other cargo."

"In addition to these witnesses, Archades, son of Mnesonidas, of Acharnæ, Sostratus, son of Philip, of Histiæa, Philtiades, son of Ctesias, of Xypete, Dionysius, son of Democratidas, of Chollidæ, have given absent[2] testimony."

With respect to the quantity of the wine which they were bound to put on board, such has been their conduct; and they began from this, the very first clause in the agreement, to violate and commit a breach of its terms. The next condition of the agreement is, "that they pledge these goods free from incumbrances, and owing nothing upon them to any one; and that they will not borrow further sums of money upon them from any one." This is expressly provided, men of the jury. But what have these persons done? Disregarding the terms of the contract, they borrow money from a certain young man, under a false pretence that they were not indebted to any one; so that they not only cheated us and borrowed money upon our security, unknown to us, but they deceived also that young man who lent them the further sum, leading him to suppose that the property on which they borrowed his money was unencumbered. Such are the tricks of these men, and they are all the clever contrivances of Lacritus the defendant. To prove the truth of my statements, and that they obtained another loan contrary to the agreement, he shall read you a deposition of the creditor himself who advanced that loan. Read the deposition.

THE DEPOSITION.

"Aratus of Halicarnassus deposes, that he lent to Apollodorus eleven minas in silver upon the merchandise which

[1] A *supercargo* is defined to be "a person employed by merchants to go a voyage and oversee their cargo, and dispose of it to the best advantage."

[2] The statement of a witness, who, by reason of absence abroad or illness, was unable to attend in court, was taken down in writing, in the presence of persons expressly appointed to receive it, and afterwards, upon their verifying it by oath, read as evidence in the cause. Such deposition was called ἐκμαρτυρία. See that title in the Archæological Dictionary.

he was carrying in the ship of Hyblesius to Pontus, and upon the goods purchased there as a return cargo, and he did not know that he had borrowed money from Androcles, or he should not himself have lent the money to Apollodorus."

Such are the knaveries of these men. It is next written in the agreement, men of the jury, that, when they have sold in Pontus the goods which they bring there, they shall purchase other goods in lieu of them, and ship them as a return cargo, and bring such cargo to Athens; and, when they have arrived at Athens, they shall within twenty days pay us the money in current coin, and that, until they have paid, we shall hold the goods under our control, and they shall deliver them to us entire, until we have received all our money. Such are the terms, clearly so expressed in the agreement. Here, men of the jury, these persons have most signally displayed their outrageous impudence, and their utter disregard of the articles contained in the agreement, as if they looked upon the agreement as mere trash and nonsense. For they neither purchased any other goods in Pontus, nor shipped any return cargo to bring to Athens; and we who had lent the money, when these men had returned themselves from Pontus, had nothing which we could seize or keep possession of as security for our dues; for these men brought nothing whatever into your harbour. We have suffered the most unheard-of cruelty, men of the jury. In our own city, without having done any wrong, without their having recovered any judgment against us, we have been robbed of our property by these men who are Phaselites, as if reprisals had been given to Phaselites against Athenians. For, when they do not choose to pay what they have borrowed, what other name can one give to such persons than that they commit a robbery upon other people? For my part, I have never heard of a more brutal act than what these men have done to us, even while they acknowledge having received our money. Those contracts which are disputed require a judicial decision, men of the jury; but those which are admitted by both the contracting parties, and concerning which there are subsisting nautical agreements, are considered by all to be binding, and it is the duty of parties to abide by what is written. That they have performed not a single article of the agreement, that from the very first beginning they meditated

fraud and intended to evade their obligations, is thus clearly proved against them both by witnesses and by themselves.

The most scandalous thing which the defendant Lacritus has done I must now tell you; for it was Lacritus who managed the whole thing. When they arrived here, they do not land in your port, but put into Thieves' Harbour, which is without the limits of your commercial port; and to put into Thieves' Harbour is the same as if one was to land at Ægina or Megara; for a man may sail away from that harbour where he likes and at what moment he pleases. And the vessel lay at anchor there more than five-and-twenty days, and these men continued to walk about on our exchange, and we went up and talked with them, and we requested them to provide for settling with us as soon as possible. They promised to do so, and said they were taking measures for that very purpose. While we thus addressed ourselves to them, we watched to see whether they unladed anything from the ship or paid any customs duty. When they had been several days in the city, and we found that they had not unshipped any goods, and that no duty had been paid in their name, we then became more urgent in our demand of payment; and at length, as we became very troublesome, the defendant Lacritus, the brother of Artemo, replied that they were unable to pay, for all their goods were lost; and Lacritus said that he could assign good ground of excuse. We, men of the jury, expressed indignation at this statement, but it did us no good to be indignant; for these men gave themselves no trouble about it: however, we asked them in what manner the goods had been lost. The defendant Lacritus said, that the vessel had been wrecked in coasting from Panticapæum to Theudosia, and that, the vessel being wrecked, the goods of his brothers which were on board were lost; there was on board some salt fish and Coan wine, and some other things; this they said was the return cargo, and they intended to bring it to Athens, had it not been lost in the vessel. Such was their statement. It is worth your while to learn the wickedness and the mendacity of these men. They had no contract in reference to the vessel which was wrecked,[1] but it was another person who had lent from

[1] Because their engagement depended not on the safety of the ship, but on the safety of the cargo.

Athens upon the freight to Pontus and upon the vessel itself (Antipater was the name of the lender, a Citian[1] by birth); and the Coan wine was eighty jars of wine that had turned sour, and the salt fish carried in the vessel from Panticapæum to Theudosia was consigned to a certain farmer for a supply of his farming labourers. Why then do they allege these excuses? It is not right to do so.

Please to take the depositions; first that of Apollonides, showing that it was Antipater who lent upon the vessel, and that these men had no concern whatever in the shipwreck; then that of Erasicles and that of Hippias, to show that only eighty casks of wine were carried in the vessel.

THE DEPOSITIONS.

"Apollonides of Halicarnassus deposes, that he knows that Antipater, a Citian by birth, lent money to Hyblesius, to Pontus, on the ship of which Hyblesius was the owner, and on the freight to Pontus; and that he was partner in the ship with Hyblesius, and that his own servants were fellow-passengers in the ship, and that, when the ship was lost, his servants were present, and they reported it to him, and reported also that the ship was lost empty, as it was coasting to Theudosia from Panticapæum."

"Erasicles deposes, that he sailed with Hyblesius as pilot of the ship to Pontus, and, when the ship was coasting to Theudosia from Panticapæum, he knows that the ship was empty, and that Apollodorus, the person who is now defendant in the suit,[2] had no wine in the vessel, but that there

Schäfer supposes that only one ship is spoken of, the ship, namely, of Hyblesius; which, after being wrecked on its passage to Theudosia, was repaired, and brought the Phaselite merchants home. The word διεφθάρη in the deposition is a little against his hypothesis. However it be, I agree with Penrose, that the tale is told very obscurely.

[1] Citium is a port in Cyprus.

[2] If the text here is correct, it would seem to show that Apollodorus was joint defendant with Lacritus, though doubtless he did not join in the *Paragraphe*, which it would have been impossible for him to maintain. This is the only passage where there is any distinct mention of Apollodorus as a party to the suit; for the expressions πρὸς τούτους, αὐτοὶ οὗτοι, &c. (pages 940—942) are ambiguous, as it is well known that friends and partisans are often thus designated as well as parties to the cause. It is difficult to suppose that the words τοῦ φεύγοντος τὴν δίκην can be used in a similar loose way. But I am

were about eighty casks of Coan wine consigned to a certain person of Theudosia."

"Hippias, son of Athenippus, of Halicarnassus, deposes, that he sailed with Hyblesius as supercargo of the ship, and, when the ship was coasting to Theudosia from Panticapæum, Apollodorus put on board one or two vessels of wool, and eleven or twelve casks of salt fish, and some goat-skins, two or three bundles, and nothing else."

"In addition to these witnesses, Euphiletus, son of Damotimus, of Aphidna, Hippias, son of Timoxenus, of Thymætadæ, Sostratus, son of Philip, of Histiæa, Archenomides, son of Strato, of Thria, Philtiades, son of Ctesicles, of Xypete, have given absent testimony."

Such is the impudence of these men. I beg you, men of the jury, to think in your minds, whether you ever knew or heard of any people importing wine from Pontus to Athens, and especially Coan wine. Surely it's just the reverse: wine is carried to Pontus from the places about us, from Peparethus and Cos and Thasus and Mende, and from a variety of other countries; and quite different things are imported here from Pontus.

I still pressed them, and asked if any of the effects in Pontus were saved. Lacritus the defendant replied, that a hundred Cyzicene staters were saved, and that his brother had lent the gold in Pontus to a certain ship-owner of Phaselis, a fellow-countryman and friend of his own, and was not able to recover it, in fact, that this also might be considered as lost. These statements were made by Lacritus the defendant: but the agreement, men of the jury, says something different; it requires these men to ship a return cargo and bring it to Athens; not to lend our property without our consent to whom they please in Pontus, but to deliver it entire to us at Athens, till we have received back the whole sum that we lent. Please to read the agreement again.

[*The agreement is read again by the officer of the court.*]

rather inclined to suspect that instead of αὐτοῦ we should read ἀδελφοῦ. We know that by the terms of the agreement the plaintiff already possessed power to seize the property of Apollodorus; and there could have been no great advantage in bringing an action against him, except, perhaps, for the purpose of holding him to bail.

Does the agreement, men of the jury, require these men to lend our property, and lend it to a man whom we don't know and have never seen, or does it require them to ship a return cargo and bring it to Athens, and produce it to us, and deliver it to us entire? The agreement declares that nothing shall have more force than the terms contained in it, and that neither law nor decree nor anything else shall be admitted to supersede the agreement; yet these men, from the very beginning, never troubled themselves about the agreement, but made use of our money as if it had been their own; such mischievous sophists are they and dishonest men. For my own part, I swear by Jupiter the king and all the Gods,[1] I never had a grudge and never uttered a reproach against any one, men of the jury, because he wished to be a sophist and pay money to Isocrates; I should be mad, if anything of the sort gave me concern. At the same time I don't think that men who have an overweening opinion of their own cleverness ought to covet the property of other people, or seek to plunder them, relying upon their eloquence; that is the part of a good-for-nothing sophist, who should be made to smart for it. Lacritus, the defendant, men of the jury, has not come into court relying on the justice of his case, but knowing perfectly well what has been done by himself and his brothers in the matter of this loan, and, considering that he is clever at speaking and can easily provide arguments for a bad cause, he imagines he can mislead you as he pleases. This is the talent which he professes, and he asks money and collects pupils, engaging to instruct them in these very things. And he has begun by instructing his own brothers in an art, which you, men of the jury, feel to be wicked and dishonest—the art of borrowing money on the exchange upon a maritime adventure, and cheating the creditors instead of paying them. Can any men be baser than either the teacher or the learners of such an art as this? However, since he is so clever, and relies upon his power of speaking and upon the thousand drachms which he has given to his preceptor, bid him show you either that they never obtained the money from us, or that they have paid what they borrowed, or that maritime agreements ought not to be

[1] This oath was probably one which the speaker was in the habit of using, as Libanius remarks.

binding, or that people ought to employ the money for some other purpose than that for which they obtained it under the agreement. Let him convince you of the truth of any of these propositions. And if he can so convince you, who are sitting in judgment upon commercial contracts, I concede that he is preeminently clever. But I am quite sure that he will not be able to satisfy or convince you upon any of these points. But, apart from these considerations—suppose, by heavens, men of the jury, that the reverse had happened, and that it was not this man's deceased brother who owed me the money, but I who owed the brother a talent, or eighty minas, or more or less; do you think, men of the jury, that Lacritus the defendant would use the same language which he has now been dinning in our ears,[1] or would say that he is not heir, and renounce his brother's inheritance, and would not exact the debt from me with the utmost severity, as he has exacted from other persons what was owing to the deceased either in Phaselis or in other places? And if any one of us, being sued by the defendant, had dared to plead a special plea suggesting that the action was not maintainable, I am sure he would have been indignant and complained bitterly to you, and called it scandalous and unlawful usage of him, if any one voted that his action, being a mercantile one, was not maintainable. Then, Lacritus, if you consider this just for yourself, why should it not be just for me? Are not the same laws enacted for all? Have not all the same rights in regard to mercantile actions? Is there any one so odious, so surpassing all mankind in baseness, as to advise you to decide that this mercantile action does not lie, when you are sitting now in judgment upon mercantile causes?

What do you require, Lacritus? Are you not content that we are deprived of the money which we lent you, but would you have us also consigned to prison for non-payment of the penalty adjudged against us?[2] Would it not be atrocious and cruel and disgraceful to you, men of the jury, if people who have lent money on a maritime adventure in your port, and who are defrauded of it, should be carried to prison by the fraudulent debtors? Is it this, Lacritus, which you

[1] κατακέχρηται. Pabst:—"die er jetzt missbrauchsweise führt." Auger:—"dont il abuse."

[2] The ἐπωβελία.

would persuade the jury to sanction? Where are we to obtain justice, men of the jury, for commercial contracts? Before what magistrate, or at what time? Before the Eleven? They bring into court housebreakers and thieves, and other malefactors who are charged with capital crimes. Before the Archon? But the Archon is enjoined to take charge of heiresses and orphans and parents. Perhaps before the King-archon? But we are not gymnasiarchs, nor are we indicting any one for impiety. Or perhaps the Polemarch will bring us into court. Yes, for neglect of a patron, or residence without a patron. There remain the Generals. But they introduce and bring to trial the cases of the trierarchs; they bring no mercantile cause into court. I am a merchant, and you are the brother and heir of a merchant, who has obtained from me a mercantile loan. Before what tribunal then am I to take this action? Show me, Lacritus; but show it conformably to law and justice. That you can't do. No man (I don't care how clever he is) can say anything just upon a case like yours.

These are not the only wrongs, men of the jury, which I have suffered from the defendant Lacritus. Besides being deprived of my money, he would have brought me (as far as it lay in his power) into the utmost peril, had not the agreement with these men done me good service, testifying that I lent the money to Pontus and back to Athens. For of course you are aware, men of the jury, how severe the law is, if any Athenian carry corn to any other place than Athens, or lend money to any other port than that of Athens. You know what penalties there are for such offences, and how heavy and stringent they are. However, read them the law, that they may have more certain information.

THE LAW.

"It shall not be lawful for any Athenian, or any alien residing at Athens, or any person under their control, to lend out money on a ship which is not commissioned to bring corn to Athens, or anything else which is particularly mentioned.[1] And if any one lend out money contrary to this

[1] Penrose writes in a note,—

"These words are not part of the law itself, but are substituted by the orator, for the sake of brevity, for a long list of different sorts of merchandise, which were specified in the law.—*Reiske*. Schäfer says

enactment, there shall be a presentment and an account of the money laid before the Overseers of the emporium; in like manner as is provided with respect to the ship and the corn. And such person shall have no right of action for the money, which he has lent out to any other place than to Athens, and no magistrate shall bring any suit thereupon to trial."

The law, men of the jury, is thus severe. Yet these rascally fellows, though it is expressly mentioned in the agreement that the money's worth shall come back to Athens, allowed the money which they borrowed from us at Athens to be carried to Chios. For when the shipowner of Phaselis wanted to borrow other money in Pontus from a certain Chian, and the Chian said he would not lend it, unless he received as security all that the shipowner had with him on board, and unless the previous lenders gave their assent, they allowed that which belonged to us to be given in pledge to the Chian, and put the whole of it at his disposal; then they sailed away from Pontus with the shipowner of Phaselis and the Chian creditor, and put into Thieves' Harbour, and never anchored their vessel in your port. And now, men of the jury, money which was lent from Athens to Pontus, and back from Pontus to Athens, has been carried to Chios by these men. It comes therefore to what I started with in the beginning—you are injured fully as much as we who advanced the money. Only consider, men of the jury. Is it not plain that you are injured, when a man endeavours to place himself above your laws, and invalidates and annuls nautical agreements, and has sent off money lent in our port to Chios? Is it not plain that such a person injures you as well as us?

I, men of the jury, address myself to these persons only; for to them I advanced my money. They will have to deal with that shipowner of Phaselis, their own countryman, to whom they say they lent the money without our consent and

that this cannot be, for Reiske forgets that this was not spoken by the party, but read by the clerk. But in this Schäfer forgets, that what the clerk read was not from any authenticated copy, but from extracts which had been taken and put into the echinus by the party; and so, if Androcles or Demosthenes had copied the law in this compendious form, the clerk would of course read it accordingly."

Pabst is not satisfied either with Reiske's view or with Schäfer's, but thinks the passage corrupt.

contrary to the agreement; we know nothing of their transactions with their countryman; that is a matter within their own knowledge. Such we consider to be a just view of the case; and we entreat you, men of the jury, to give redress to us who are the injured parties, and to punish people who resort to trickery and sophistry, as these men do. If you take this course, your decision will be in accordance with your own interests, and you will deprive the swindlers of those artifices by which some of them contrive to evade nautical contracts.

THE ORATION FOR PHORMIO.

THE ARGUMENT.

Phormio, on whose behalf the present speech was composed, is (as the readers will easily discern) a different person from the defendant in the action by Chrysippus. The defendant in the present action was at an early period a slave of Pasion the banker, whose business for a long time he managed, and from whom as a reward for his good conduct he received his freedom.

Pasion died leaving a widow, Archippe, and two sons, Apollodorus and Pasicles, the younger of whom was a minor. He left a will, by which he directed that Phormio should marry his widow and receive with her a certain marriage portion; and he appointed him one of the guardians of his younger son, Pasicles. The bulk of his property was inherited by his two sons; between whom, soon after their father's death, a division was made by the guardians of all the inheritance, except the bank and a shield-manufactory, of which Pasion in his lifetime had granted a lease to Phormio, and the rents of which he continued to pay to the children until Pasicles came of age. At that time they came to a settlement; Phormio was discharged from the lease; and the brothers divided the two properties, Apollodorus taking the shield-manufactory, and Pasicles the bank. Upon the death of Archippe, Apollodorus made certain claims upon Phormio for property alleged to be in his possession; their dispute was referred to private arbitrators, under whose advice a compromise was agreed to, and Apollodorus gave to Phormio a release of all demands. A long time after this, and more than eighteen years after Pasion's death, Apollodorus preferred the claim, which is the subject of the present action, against Phormio, for a sum of banking stock, alleged to have been left by Pasion in the bank, and to have been fraudulently appropriated by Phormio to his own use. Phormio indignantly denies the charge, asserting that Pasion possessed no banking stock, but, on the contrary, owed eleven talents to the bank when he took a lease of it. He contends that the charge was trumped up by

Apollodorus in order to extort money, he having brought himself into difficulties by litigation and extravagance.

Such is the case for the defence, stated to the jury by the friend who speaks on Phormio's behalf. Besides this answer on the merits, he pleads two pleas in bar of the action; first, a release of all demands by the plaintiff; secondly, the statute of limitations.

The result of the trial we learn from the speech against Stephanus, (page 1103,) where it is stated, that the speech for the defence made such an impression on the jury, that they would not hear a word that Apollodorus had to say, and the verdict passed against him by so large a majority, that he had to pay the *Epobelia,* or a sixth of the damages.

This speech, instructive and important as it is on other accounts, acquires an additional interest from the charge, to which it has given rise, against the character of the orator; who here attacks and bitterly inveighs against the character of a man, whom he had supported by his counsel and advocacy for a long series of years, and whom he again assisted in the suit against Stephanus, which arose out of this very proceeding. For Apollodorus our orator had composed the speeches against Timotheus, Callippus, Nicostratus, Polycles; that for the Naval crown, and several others. These indeed were in no way connected with the present case; and, unless Apollodorus was the personal friend of Demosthenes, he could hardly be censured for having undertaken the cause of a new client who was opposed to him. The case of Stephanus however stands on a different footing. Stephanus gave evidence for Phormio to establish Pasion's will, which was disputed. Apollodorus sued him for false testimony, and Demosthenes composed in his defence the two extant speeches against Stephanus, in which he contends that the will which Phormio produced at the trial was a forgery, and gives a totally different complexion to the family history of Apollodorus, and the proceedings therewith connected, from that which is given in the present speech. It is by this act that Demosthenes has laid himself open to censure.

We may regard as mere calumny the unsupported assertion of Æschines, that Demosthenes betrayed his client's secrets to the adversary. Plutarch simply observes, that Demosthenes damaged his reputation by writing speeches for both sides, which, he says, was like supplying two adversaries with weapons from the same workshop. Reiske, Auger, and many other modern critics have expressed similar opinions. The suggestion of Albert Gerhard Becker, that the speech for Phormio may have been wrongly ascribed to Demosthenes, is opposed to the current of authority. Ranke conceives, that, as some time must have elapsed between the first trial and the proceeding against Stephanus, the orator may in the meantime have found reason to change his opinion, and gone over to Apollodorus because he thought the merits of the case were on his side. This would hardly justify him according to our English notions; for we hold that it is not the province of the advocate to set himself up as a judge between the contending parties, much less to desert from one to the other upon any such ground. Pabst

adopts a view, to which Thirlwall also inclines; that the double-dealing of Demosthenes in relation to Apollodorus and his opponent is not to be ascribed to any professional love of gain, but that he was tempted to take up the different sides of a question as a rhetorical exercise, and felt less scruple to do so in the case of persons like Apollodorus and Phormio, who were citizens of late creation. It is very possible that we are not in possession of the circumstances which might tend to justify or excuse the course taken by the orator. An English counsel would consider himself at liberty to accept an engagement against his former client, even in a case arising out of one in which he had been his advocate, if the client had not thought proper to secure his services by retaining him beforehand. It seems not unreasonable to apply a similar rule of right to the practice of an Athenian speech-writer. Apollodorus, in commencing his action against Phormio, may in the first instance have thought it unnecessary to employ Demosthenes; yet afterwards may have repented of not having done so. Phormio may in the subsequent proceeding have been guilty of similar neglect, and thus given the advantage to his opponent. Demosthenes of course knew the weak points of Phormio's case, and, being engaged on the other side, did not hesitate to expose them. He may, as I have intimated, have been justified in doing so by an understood course of practice, or possibly by some peculiar circumstances unknown to us. The reader should by all means compare the present speech with those against Stephanus.

The date of this speech is said to have been B.C. 350.

PHORMIO'S inexperience in speaking and utter incapacity you see yourselves, men of Athens. It is necessary for us his friends to state and explain to you those particulars, which, from having heard him so often relate them, have become known to us; that, when we have rightly informed and put you in possession of the case, you may give a just and conscientious verdict. We have put in the special plea to the action, not for the sake of evasion and delay, but in order that, if the defendant can show by the facts that he has committed no wrong, he may obtain in this court a final acquittal. What with other people settles and determines disputes without a trial by jury, Phormio the defendant has done; he has conferred many benefits on the plaintiff Apollodorus, he has honestly paid and delivered up everything belonging to the plaintiff which was left under his control, and has since that been released from all demands; yet, as you see, because he is not able to endure this man's treatment,[1] he has com-

[1] *i.e.* because Phormio cannot submit to the vexatious and extortionate demands of Apollodorus. Pabst. "Da dieser sich seine Zudringlichkeiten nicht mehr gefallen lassen konnte."

menced against him this vexatious action for twenty talents. I will begin at the beginning, and endeavour to explain to you in as short a compass as possible all the transactions which the defendant has had with Pasion and Apollodorus. From this, I am sure, you will clearly see the vexatious conduct of the plaintiff, and from the same statement you will learn that the action is not maintainable.

First he shall read you the articles of agreement, according to which Pasion let the bank and the shield-manufactory to the defendant. Please to take the articles of the agreement and the challenge and these depositions.

[*The Articles of Agreement, the Challenge, the Depositions.*]

These, men of Athens, are the articles, according to which Pasion let the bank and the shield-manufactory to the defendant, when he had become his own master. You must hear and understand, in what way Pasion came to owe the eleven talents to the bank. He owed that sum not on account of poverty, but on account of his industry in business. For the landed property of Pasion was about twenty talents, and, in addition to that, he had money of his own lent at interest, amounting to more than fifty talents. With these fifty talents there were eleven talents from the deposits of the bank profitably invested. When Phormio therefore became lessee of the bank business, and received the deposits, seeing that, while he did not enjoy the rights of Athenian citizenship, he should not be able to get in the monies that Pasion had lent on land and lodging-houses, he chose that Pasion himself should owe him those sums rather than the other debtors to whom he had lent them. And so on this account Pasion was set down in the lease as owing eleven talents, as you have heard stated in evidence.

In what way the lease was made, evidence has been given to you by the manager of the bank. Pasion became ill after that, and see how he made his will. Take the copy of the will, and this challenge, and these depositions, made by the persons with whom the will is deposited.

[*The Will, the Challenge, the Depositions.*[1]]

[1] See what Apollodorus says as to this mode of proving the will in the speech against Stephanus, p. 1104, &c.

Pasion died leaving this will; and Phormio the defendant takes his widow according to the terms of the will, and undertook the guardianship of his son. As the plaintiff was helping himself, and not scrupling to take large sums out of the common fund for his own private expenditure, the guardians, calculating among themselves that, if it should become necessary to deduct from the common fund an equivalent to what the plaintiff had spent and then divide the residue, there would be no surplus left, determined on behalf of the infant to make a partition of the effects. And they divide the rest of the property except what the defendant had taken a lease of; and of the revenue arising therefrom they paid a moiety to the plaintiff. Up to this time then how is it possible for him to make any complaint in respect of the lease? He should have expressed his dissatisfaction at the time, and not waited till now. Nor again can he say that he has not received the rents which afterwards became due. Had that been so, Apollodorus, you and your brother would never have released Phormio from all demands, when he gave up the lease upon Pasicles coming of age; on the contrary, if he had owed you anything, you would have demanded it that instant.

To prove the truth of my statements—to show that the plaintiff made partition with his brother while yet a minor, and that they discharged Phormio from his liability under the lease and from all other demands—take this deposition.

[*The Deposition.*]

Immediately after they had discharged the defendant from the lease, men of Athens, they divide between them the bank and the shield-manufactory, and Apollodorus, having the selection, chooses the shield-manufactory in preference to the bank. Now, if the plaintiff had any private capital in the bank, what could possibly have induced him to prefer the other property? The income was not greater, but less; for the manufactory produced a talent, while the bank yielded a hundred minas; nor was the property more agreeable, if there was a private fund of his own in the bank. But there was no such fund. The plaintiff therefore acted wisely in choosing the shield-manufactory; for that is a property

without risk, whereas the bank is a business yielding a precarious revenue from other people's money.

It might in many ways be clearly shown, that this claim of the plaintiff's to a sum of banking stock is false and fraudulent. The strongest proof of all, that Phormio received no banking stock when he took to the business, is this, I take it; that Pasion has been set down in the lease as debtor to the bank, not as having given banking stock to the defendant. The second proof is, that the plaintiff does not appear to have made any demand at the time of the partition. The third, that, when afterwards he let[1] the same establishment to other persons for the same sum, he will be shown not to have let any private fund of his own with it. Surely, however, if he was deprived by the defendant of a fund which his father bequeathed, he ought himself to have provided it from some other source, and delivered it to the lessees.

To prove the truth of these statements—and that he afterwards let the bank to Xeno and Euphræus and Euphron and Callistratus, and that they also had no private banking stock delivered to them, but took a lease only of the deposits and the profits arising from them—please to take the deposition proving these matters; and also that he chose the shield-manufactory.

[*The Deposition.*]

It has been proved to you in evidence, men of Athens, that they granted a lease to these persons also, and did not deliver to them any private banking stock, and that they gave them a complete discharge, as if they had received great benefits from them, and did not go to law either with them or with Phormio at that time. As long indeed as his mother lived, who was perfectly acquainted with all these particulars, Apollodorus never made any complaint against Phormio the defendant; but after her death he claimed three thousand drachms in money, besides two thousand which she had given to his children, and a certain tunic and maid-servant, and for this false claim he went to law. Even here, as will be shown, he made no mention of the demand which he now

[1] "Non potest hoc nisi de Apollodoro intelligi. Qui autem factum sit, ut quod initio solius Pasiclis fuerat ejus elocandi jus postea etiam ad Apollodorum pertineret, quis hodie pro certo dicat." Schäfer.

makes. Upon his referring the matter to the father of his wife and the husband of his wife's sister and Lysinus and Andromenes, they persuaded the defendant Phormio to make him a present of the three thousand drachms and the additional articles, and to make a friend of the plaintiff rather than be at enmity with him on such an account: the plaintiff then received in the whole five thousand drachms, went to the temple of Pallas, and a second time released Phormio from all demands. Notwithstanding this, he sues him, as you see, again, getting up all kinds of accusations, and raking from the whole history of the past charges (this is the worst of all) which he never made before.

To prove the truth of these statements, please to take the award that was made in the Acropolis, and the deposition of the persons who were present, when Apollodorus upon the receipt of this money gave a release of all his claims.

[*The Award. The Deposition.*]

You hear the award, men of the jury, which was given by Dinias, whose daughter the plaintiff has married, and Nicias, who has married his wife's sister. Notwithstanding that he has received this money and given a release from all claims, he dares to bring an action for so many talents, just as if all these persons were dead, or as if the truth would not be disclosed.

All the dealings and transactions between Phormio and Apollodorus you have heard, men of Athens, from the beginning. I imagine that Apollodorus the plaintiff, having nothing to urge in support of his claim, will say what he ventured to assert before the arbitrator, that his mother has made away with the papers at the defendant's instigation, and that, these being lost, he has no means of proving his case strictly. As to this statement and the charge which it involves, see how plainly he may be convicted of falsehood. In the first place, men of Athens, who would have made a partition of his patrimony, without having documents to ascertain the amount of the property left? No man surely. Well; it is eighteen years, Apollodorus, since you made the partition, and you cannot show that you ever complained about the papers being lost. In the next place, when Pasicles had come to man's estate and was receiving from his guar-

dians their trust account, what man, if he scrupled with his own mouth to accuse his mother of having destroyed papers, would not have disclosed the thing to his brother, so that by his assistance it might have been brought to light?[1] Thirdly, from what papers did you get the materials for the actions that you brought? You must know that the plaintiff has brought actions against many of our citizens, and recovered large sums of money, inserting in his plaints—"Such a party has injured me by not paying me the money, which he owed to my father at his death, as appears by my father's papers." But, if the papers had been made away with, from what paper did you commence your actions?

In proof of these statements of mine, you have heard the partition which he made, and the evidence which proves it. He shall now read you the depositions verifying the plaints. Please to take the depositions.

[*The Depositions.*]

You see, in these plaints he has confessed having received his father's papers; for of course he would not say that he made false charges or sued those parties for what they did not owe.

Many strong proofs are there, men of Athens, that Phormio the defendant is not liable; but I think this is the strongest of all, that Pasicles, though he is the brother of the plaintiff Apollodorus, has commenced no action, and makes none of the complaints which this man does. Surely it is not likely that he would have forborne to injure one who was left a minor by his father, and of whose property he had the control as testamentary guardian, and yet would have done an injury to you, who at your father's death were a man of four-and-twenty, and who, if any wrong had been done you, would speedily and without difficulty have obtained justice. That is a thing impossible.

To prove the truth of these statements, and that Pasicles makes no complaint, please to take the deposition which proves it.

[1] *τούτῳ—τούτου.* "Redeunt ad Pasiclem."—Reiske. "Immo ad Apollodorum."—Schäfer.

I agree with Reiske. The suggestion is, that Apollodorus would have got Pasicles to investigate the matter when his guardians were passing their account.

[*The Deposition.*]

There are points which you have now to consider in relation to my plea in bar of the action; please to recall these to your minds from what has already been stated. We, men of Athens—there having been a statement of accounts and a discharge from the lease of the bank and the shield-manufactory—there having also been an award, and again a release of all demands—as the laws do not allow people to bring actions for demands which they have once released, and as the plaintiff was making a vexatious claim and suing contrary to the laws—we, under these circumstances, put in a special plea in bar of his action. Now then, that you may understand the point on which you have to pronounce your verdict, he shall read you this statute and the depositions, one after the other, of the persons who were present when Apollodorus discharged Phormio from the lease and from all other claims. Please to take these depositions and the law.

[*The Depositions. The Law.*]

You hear the law, men of Athens, mentioning, among other matters for which there shall be no right of action, those of which a man has given a release or discharge. And with reason. For if it is just, that people shall not bring fresh actions for causes which have once been tried, it is far juster that there shall be no action for claims which have been released. For a man who has lost his cause by your verdict may possibly say that you were deceived; but when a man has plainly decided against himself, and given a release and discharge, what complaint can he prefer against himself to entitle him to sue over again for the same matter? None surely. Therefore the framer of the statute, among the cases in which there is to be no right of action, first mentions those, in which a man has given a release or discharge: both of which have been given by this man, for he has released and discharged the defendant. That my statement is true, men of Athens, has already been proved to you in evidence.

Now please to take the statute of limitations.

[*The Law.*]

The law, men of Athens, has thus clearly prescribed the time. Yet the plaintiff Apollodorus, after a lapse of more

than twenty years, calls upon you to pay more respect to his calumnious charges than to the laws, according to which you are sworn to give judgment. You are bound to pay regard to all the laws, but especially to this, men of Athens. For, as it seems to me, Solon framed it for no other purpose but to prevent your being harassed with false claims. He considered that five years was a sufficient time for injured parties to recover what was due to them; and he thought that length of time would be the plainest proof against those who came with false stories. And knowing also, that it was impossible for the contracting parties and their witnesses to live for ever, he put the law in their place, that it might be a witness of truth in favour of the destitute.

I wonder, men of the jury, what arguments Apollodorus, the plaintiff, can possibly urge in reply to these. He can hardly suppose that you, without finding him to have sustained any pecuniary injury, will be indignant at Phormio's having married his mother. For he is not ignorant of this—it is no secret to him or to a good many of you—that Socrates the banker, having got his freedom from his masters, did what the plaintiff's father did, gave his wife to Satyrus, who formerly belonged to him. Socles, another banker, gave his wife to Timodemus, who is yet alive and in being, and formerly belonged to him. And it is not here only, men of Athens, that people in this line of business so act; but in Ægina Strymodorus gave his wife to Hermæus, his own slave, and again, upon her death, he gave him his daughter. And many such examples could be quoted, and no wonder. For, although to you, men of Athens, who are citizens by birth, it would be disgraceful to prefer wealth, however great, to honourable descent, yet those persons who have obtained citizenship as a gift either from you or from others, and who owed that honour originally to their good fortune, to their having prospered in business and made more money than their neighbours, are obliged to preserve these advantages. Therefore it was that your father Pasion did what he has done: he was not the first nor the only person that ever did such a thing: he did it not to disgrace himself or you his sons; but seeing that the only way to keep up his business was to attach this man to you by a binding connexion, for that reason he gave his own wife, your mother, to him in

marriage. If you examine his conduct then by the standard of utility, you will find that he has determined wisely: but if you spurn Phormio as a father-in-law from family pride, see if it is not ridiculous in you to allege such a ground. For, if you were asked, what sort of a person you consider your father to have been, I am sure you would say, he was a good man. Now, which do you think more resembles Pasion in character and mode of life—yourself or Phormio? I am sure you think Phormio does. Then do you spurn a man who more resembles your father than you yourself do, because he has married your mother? That the thing took place by your father's desire and direction, not only appears from the will, (observe this, men of Athens,)—but you yourself are witness to the fact. For when you claimed to take your share of your mother's inheritance, she having left children by the defendant Phormio, you then confessed that she had been regularly affianced by your father and married according to the laws. For if the defendant took her, and made her his wife wrongfully, without any one giving her in marriage, his children would not have been heirs, and those not heirs could have had no share in the property. In proof of these statements it has been shown in evidence, that he received a fourth share and gave a release of all demands.

Having nothing to say for himself on any single point, men of Athens, he ventured to make before the arbitrator the most impudent assertions, of which it is best to warn you—first, that there never was any will at all, but that it was altogether a fiction and a forgery—secondly, that in previous years he forbore to dispute it or go to law, because Phormio was willing to pay and promised to pay him a large rent; "but now," says he, "I go to law, because Phormio does not perform his promise." That both these assertions, if he makes them, will be false, both inconsistent with his own conduct, I am about to show you; pray, attend. When he denies the will, ask him how it came that he got the lodging-house under the will by right of primogeniture. He will hardly maintain, that those parts of the will are valid, by which his father gave him a benefit, and that the other parts are invalid. When he says that he was seduced by the defendant's promises, remember that we have brought as witnesses before you the persons, who, long after the defend-

ant's retirement, took a lease under Apollodorus and his brother of the bank and the shield-manufactory. At the time when he granted the lease to those men, he ought at once to have made his charge against the defendant, it there was any justice in the demands, of which he then gave a release and for which he now sues.

To prove the truth of these statements—that he took the lodging-house by right of primogeniture according to the will—and that he not only thought it right to make no complaint against the defendant, but expressed approbation of his conduct—take the deposition.

[*The Deposition.*]

That you may know, men of Athens, what large sums of money he has received from the rents and from the debts, although he will presently bewail his destitution and utter ruin; let me mention a few things to you. The plaintiff has collected out of the debts twenty talents altogether, from the papers which his father left, and of this amount he has kept more than half to himself; for in many cases he cheats his brother out of his share. From the leases, for eight years during which Phormio had the bank, he has received eighty minas a year, the moiety of the whole rent; that makes ten talents forty minas; and for ten years after that, for which they leased to Xeno and Euphræus and Euphron and Callistratus, a talent a year. Besides this, he has had the income for about twenty years of the property originally divided, which he managed himself, more than thirty minas. If you put all these sums together, what he got by the division, what he collected, what he has received as rent, he will appear to have received more than forty talents, besides what Phormio has made him a present of, and the maternal inheritance, and what he has had from the bank and does not return, four talents and a half and six hundred drachms.

Oh, but I suppose the state has had these monies, and you are cruelly treated because of your large expenditure on the public services. Nay. What you gave to the public out of your property before it was divided, you and your brother expended in common; and what you gave afterwards amounts not to the income, I won't say of two talents, but of twenty minas. Do not then accuse the state; do not say that the

state has received the property which you have wickedly and shamefully wasted.

That you may see, men of Athens, both the amount of property which he has received, and the public charges which he has defrayed, he shall read you the particulars. Please to take this schedule and this challenge and these depositions:

[*The Schedule. The Challenge. The Depositions.*]

He has received all these monies; he has many talents' worth of debts, some of which he gets paid voluntarily, some he recovers by action; all of which were owing to Pasion, (besides the rent of the bank and the other property which he left,) and which Apollodorus and his brother have now received: he has spent only what you have heard, (being an inconsiderable portion of the income—I needn't say the capital,) upon the public services; and yet he will play the braggart, and talk of trierarchal and choragic expenses. That his assertions will be untrue, I have already shown; yet, even were they all true, I think it is more honourable and just that the plaintiff should defray public charges out of his own means, than that you should give the defendant's property to the plaintiff, and, while you yourselves get but a small share of the whole, should see the defendant in extreme indigence, and the plaintiff behaving himself with arrogance and spending his money in the accustomed manner.

With respect to Phormio's affluence, Apollodorus, and his having got it from your father's estate, and the questions which you said you would put, how Phormio has acquired his property—you of all men, Apollodorus, are the least entitled to talk in this way. For Pasion your father did not acquire his property, any more than Phormio did, by good luck[1] or by inheritance from his father; but while he was with his masters, Antisthenes and Archestratus, the bankers, he gave proof that he was honest and just in his dealings, and won their confidence. In the commercial world and the money market it is thought a wonderful thing, when the same person shows himself to be both honest and diligent.[2] Pasion

[1] Schäfer—"fortuitu." Pabst—"durch Erwerb."

[2] Pabst—"Es ist aber an einem Handelsplatze und bei Leuten, welche Geldgeschäfte treiben, etwas ganz ausserordentlich Wichtiges, wenn Einer sich thätig und betriebsam und zugleich brav und redlich zeigt."

did not derive this quality from his masters, for he was honest by nature: no more did Phormio derive it from your father; for, had it been in your father's power, he would have made you honest in preference to Phormio. If you are ignorant of this, that trustworthiness is the best capital for money-getting, you must be ignorant of everything. And besides this, Phormio has in many ways been useful as well to your father as to you, and to your affairs generally. But indeed such is your covetousness, such your disposition, that no language could come up to it.[1] I am astonished you don't reflect, that Archestratus, to whom your father formerly belonged, has a son here, Antimachus, in a condition unbefitting his rank; who does not go to law with you and say he is cruelly treated, because you wear a mantle, and have redeemed one mistress and given another in marriage, and do these things notwithstanding that you have a wife, and take three footboys about with you, and live so indecently that even people meeting you in the streets perceive it, while he himself is in a state of wretched destitution. Nor is Phormio's position unknown to him. If you think you have a claim to Phormio's property on this account, because he once belonged to your father, Antimachus has a greater claim than you; for your father also belonged to that house, so that both you and Phormio belong to Antimachus according to your argument. But you are so lost to proper feeling, that, what you ought to detest any one for saying, you yourself compel people to say of you, and, while you disgrace yourself and your deceased parents, you treat the state with contumely, and, instead of cherishing and making much of the good fortune, which your father and afterwards the defendant Phormio obtained by the kindness of these men, so that it might have reflected the utmost credit both upon the givers and you the receivers, you bring it into public view, you point your finger at it, you call it in question, and all but reproach the Athenians for naturalising such a person as yourself. Nay, at such a pitch of madness are you arrived—(for what else can one call it?)—you don't perceive, that at this very moment we, who insist that, as Phormio has received his freedom, the fact of his having once belonged to your father should not be remembered to his disadvantage,

[1] Pabst—"wer könnte genügend schildern?"

are speaking on your behalf; while you, who insist that he should never be on a footing of equality with you, are speaking against yourself: for the same law of justice, which you lay down for yourself against the defendant, will be advanced against you by those whose slave your father was originally.

To prove that Pasion also was a slave, and afterwards obtained his freedom in the same manner as the defendant did from your house—please to take these depositions, showing that Pasion belonged to Archestratus:

[*The Depositions.*]

The man then who originally upheld the business, who made himself in various ways useful to the plaintiff's father, who has conferred on the plaintiff himself all the benefits which you have heard, he thinks proper, by means of a judgment with such heavy damages, to cast out unjustly from house and home. It is this only that you will be able to accomplish, Apollodorus. For, if you look closely at the nature of the property, you will see to whom it belongs,[1] in case the jury should be misled; which heaven forbid! Do you see Archilochus, the son of Charidemus? he once owned some land; and now it has many owners; for, when he purchased it, he was indebted to a great number of persons. You know also Sosinomus and Timodemus and the other bankers, who, when they were obliged to settle with their creditors, gave up their whole property. You however don't choose to take anything into consideration, not even the prudential measures taken by your father, a better and a wiser man in all things than yourself. He—by Jupiter and the Gods!—regarded the defendant as so much more valuable than you, both to yourself and to him and to your affairs, that, although you had come to man's estate, he left the defendant, and not you, to be the manager of his leases, and gave him his wife in marriage, and honoured him in his lifetime. Justly, men of Athens. For other bankers, not paying rents, but trafficking on their own account, have all come to ruin; while the defendant, paying you a rent of two talents and forty minas, maintained the bank. For this Pasion was thankful to him, but you make no account of it; you, in

[1] *I.e.* to the creditors of the bank, who will soon come upon it, if heavy damages are awarded against Phormio.

defiance of the will and the imprecations pronounced therein by your father, harass, persecute, and calumniate him. My good sir—if one can thus address you—will you not be quiet —will you not understand that to be honest is a more profitable thing than a heap of gold? Your own is a case in point, if you tell the truth; for, after receiving all this money, you have lost it all, as you say: but, if you had been a sober-minded man, you would not have spent it.

By Jupiter and the Gods! Looking at the matter in every point of view, I can see no reason why you should prevail upon the jury to give a verdict against Phormio. Is this the ground—that your charge comes soon after the offence? No; you are accusing him years and years after. Or because during the interval you were not a litigious person? Why, who does not know how incessantly you have been engaged in litigation, not only prosecuting private suits of no less importance than the present, but trumping up public charges and bringing people to trial? Did you not accuse Timomachus? Did you not accuse Callippus who is now in Sicily? Again, did you not accuse Menon—Autocles—Timotheus—and many others? But is it credible that such a person as you, Apollodorus, would demand satisfaction for public wrongs, a portion of which only pertained to yourself, sooner than for the private wrongs of which you now complain, especially when they were so serious as you now pretend? How came it that you accused those men and let Phormio alone? You were not wronged, I presume; and your present claim is false and vexatious. I consider then, men of Athens, that it will be eminently to the purpose to produce witnesses to these facts; for what can one expect now from a person who is always making groundless charges? And in truth, men of Athens, I think that whatever serves for an index of Phormio's character, and a proof of his rectitude and humanity, is a relevant matter to bring before you. For a man who is dishonest on all occasions might possibly have wronged the plaintiff, among others; but a man who has never wronged any one—who, on the contrary, has rendered services spontaneously to many—how is it likely that he should have wronged the plaintiff alone of all mankind? When you have heard these depositions, you will know the character of each.

[*The Depositions.*]

Now for those to prove the baseness of Apollodorus.

[*The Depositions.*]

Consider if this man is like the other. Read.

[*The Depositions.*]

Now read the account of the public services which the defendant has done to the state.

[*The Depositions.*]

Phormio, men of Athens, who has rendered such signal services to the state and to many of her citizens, who has never done harm to any one either publicly or privately, and is guilty of no offence to Apollodorus the plaintiff, begs and beseeches and implores you to save him, and we his friends join in the same petition to you. Another thing too you must hear. It has been read to you, men of Athens, that he has acquired such a heap of money as neither he nor any one else possesses. Yet Phormio has credit with those that know him for this and for a greater amount, and by means of such credit he benefits both himself and you. Do not give this away from him; do not suffer this odious man to destroy it; do not establish a disgraceful precedent, that the property of men in business, who live respectable lives, may be obtained from you by miscreants and pettifoggers: indeed it is much more useful to you while it remains in the defendant's possession; for you see yourselves and you hear from the witnesses, how he behaves to those who need his assistance. And he has not done any of these acts for the sake of pecuniary advantage, but all out of humanity and goodness of heart. It is not right, men of Athens, that you should abandon such a man to the mercy of the plaintiff. You must not pity him at a time when it will be of no advantage to him, but now, when you have it in your power to save him; for I see no fitter opportunity than this to lend him assistance. The mass of what Apollodorus will say you should regard as mere talk and calumny; but bid him show you, either that his father did not make this will, or that there is another lease than the one which we produce, or that he did not after stating an account release Phormio from all

the claims which his father-in-law decided with the plaintiff's own concurrence, or that the laws allow people to bring actions for matters which have been so settled—bid him show something of the kind, at all events. If, for lack of argument, he resorts to calumny and foul language and abuse, do not attend to him; do not let his clamour and impudence deceive you; but keep in mind and remember all that you have heard from us. If you act in this manner, you will at the same time satisfy your own consciences and preserve the defendant, as justice requires, and as, by Jupiter and all the Gods, he deserves.

Take and read them the law and these depositions.

[*The Law. The Depositions.*]

I see no reason for detaining you any longer; as nothing that I have said has escaped you, I believe. Pour out the water.

THE ORATION AGAINST PANTÆNETUS.

THE ARGUMENT.

The present speech was delivered in a mining cause, and, in order to understand it fully, the reader must know something about the Athenian law relating to mining property.

The silver mines of Laurium, which in ancient times contributed so greatly to the prosperity of the Athenian republic, comprised a hilly district not far from the promontory of Sunium, and stretching from coast to coast in a line of about sixty stadia, from Anaphlystus in the south-west to Thoricus or the north-east sea. The district was populous, including the village of Laurium and several others, inhabited chiefly by mining labourers. Mining is said to have been carried on from an early period, though the scarcity of silver in Solon's age proves that no good system of working had then been adopted. In the time of Themistocles the mines had become very productive, and the Athenians, under the advice of that statesman, applied the revenues obtained from them (amounting annually to thirty or forty talents), to the fitting out of a large fleet for the Æginetan war. In the age of Socrates, though a greater number of labourers was employed by the mine-owners, the public revenue, and therefore the quantity of silver obtained from the mines, had diminished. In the age of Demosthenes the profits had considerably fallen off; and before that of Strabo (who wrote in the first century of the Christian era) the mines had been almost entirely exhausted.

The mines were worked either by shafts or adits, and sometimes by the removal of large masses, pillars being left for the support of the

overlying rock. The removal of the ore appears to have been effected partly by men and partly by machines. The stamping at the foundries, to facilitate its separation from the useless mass, was commonly performed with the pestle and mortar. With respect to the processes of smelting or fusion in the Attic foundries, we have little direct information from ancient authors; the treatises of Theophrastus and others upon this subject having been lost. It is the opinion of Boeckh, from whose Dissertation on the silver-mines of Laurium we derive most of our information, that the smelting processes used by the Athenians were pretty much the same as those employed in other ancient mines. A few extracts from Boeckh, relating to these matters, will be found among the notes to this oration. What the reader however is more immediately concerned with is, to understand the tenure of mining property at Athens, and the laws and regulations regarding it. To these I proceed to draw his attention.

The mines were the property of the Athenian state; which however did not work them at the public cost and risk, but granted them out on perpetual leases to various private speculators, in consideration of a premium, and a reserved rent of a twenty-fourth part of the gross produce, which was paid in bullion. A certain share or district was assigned to each tenant, or company of tenants, the boundaries being described as accurately as possible in the conveyance. Upon payment of the premium or purchase-money, the tenant was regarded as virtual owner, subject to the payment of his rent; and his title was transmissible by descent or purchase. No alien however was capable of holding property in the mines. Whoever wished to open a new mine and obtain a grant of it, applied to the Poletæ, who superintended the sales of all public property. It is likely enough, as Boeckh thinks, that the immediate payment of the premium was not always insisted upon, but that the applicant for a mine was sometimes allowed to dig in an unopened part of the mountain, to ascertain whether a profitable ore was likely to be found, before he took his lease, or before he paid his purchase-money. The premiums were paid directly into the state treasury; the rents were paid to a farmer-general.

The number of mine proprietors was very considerable in the flourishing times. The shares, into which the mine district was divided, were unequal in extent and value, but not greatly unequal; the ordinary price of one is said to have been a talent. Sometimes a mine was worked by two or more persons in partnership; and sometimes a company was formed for opening new works, who afterwards, if they were fortunate enough to find plenty of ore, divided the space into different compartments, which they worked independently, each taking a separate share. Thus they ran the risk in common until such time only as they found a remunerative vein of metal. Such a plan was first suggested by Xenophon in his treatise on the Revenue, and it appears to have been acted upon.

The labour of mining, like most other productive labour among the Athenians, was performed by slaves, either belonging to the proprietors, or (which was less usual) hired for the purpose. Mining slaves were of inferior quality, and their labour was therefore cheaply

procured; but it is manifest that the employment of such persons was unfavourable to great success or improvement in mining art. Nicias, the celebrated general, who was a large mine owner, employed a thousand slaves; Hipponicus, six hundred; and they are said to have let their mines and slaves to contractors, Nicias receiving a mina and two-thirds per day.

The mines being a regular source of income to the state, though the amount was continually fluctuating, depending on the greater or less number of mines that were taken, upon the quality of the ores, and the greater or less activity and success with which they were worked; it was important for the Athenians to make careful regulations to preserve the property, and render it as productive as possible. Special laws were passed relating to them, as well to protect the republic against frauds, as to encourage mining speculations among respectable capitalists, and to secure the tenants in the peaceful occupation of their allotments.

The clandestine opening of a mine, without the permission of the Poletæ, and without the name of the party opening being entered in the public register, subjected him to criminal proceedings: this being regarded as a political offence, the charge was brought by *Probole* before the popular assembly, to obtain its sanction for the prosecution. If the purchase-money of a mine was not paid into the treasury by the appointed time, the tenant became liable to pay the double amount, and to the other penal consequences which fell upon state-debtors. If he failed to pay his rent, the farmer-general was empowered to proceed against him; but the extreme penalty in this case was the forfeiture of his mine to the state, unless the default was attended with aggravating circumstances. For other public offences relating to the mines a *Phasis* might be preferred, upon which the punishment was discretionary with the court.

For private mining causes the law provided a special method of trial, in the same manner as it did for mercantile causes, appointing them to be tried within a month before the Thesmothetæ. This had been one of the suggestions made by Xenophon in the treatise already referred to. Demosthenes in this oration mentions four cases to which the privilege extended: 1. Ejectment of a mine-owner from his occupation: 2. Incendiarism: 3. An attack with arms: 4. Cutting into another owner's boundaries. I am disposed to think, as Meier seems to have thought, that Demosthenes has not exhausted all the cases comprised in the law which he cites to the jury; but that either the law itself put these by way of example only, and contained also a general clause including other offences *ejusdem generis;* or that the orator only cited an extract, which was sufficient for his own purpose. The intention of the law must have been, to provide a speedy remedy for all injuries which prevented the beneficial working of the mines, which concerned the public as well as the party wronged. Such would be not merely the burning of a mine, or of its chambering and supports, but any other act of destruction or mischief—such would be not only the absolute ejectment of a tenant, but any obstruction or interference continued for a length of time; again, any injury to a neighbouring proprietor, whether by armed

invasion, or perforation into his boundaries, or any other unlawful encroachment upon his works or his rights—and again, acts of negligence; as where a man, by neglecting to maintain his own supports, rendered those of his neighbours unsafe, or improperly drained or diverted water into an adjacent district—and a multitude of wrongful acts may be conceived, to which the objects of the Athenian law would equally apply. It is probable however that those only were mining causes within the scope of the law, where the dispute directly concerned a mine and was between mining people, or parties interested in mining property; for example, between neighbouring owners, or claimants for possession, or partners, or (it may be) persons standing in the relation of vendor and purchaser, or mortgagor and mortgagee. For example; if a stranger had destroyed the supports of a mine, this would not give rise to a mining cause; otherwise, if an adjoining owner had done so. Again, if the mortgagee of a mine sued for his money, it would not be a mining cause merely because the mortgage of the mine was an incidental topic; but, if the mortgagee had illegally taken possession of the security, he might be sued before the mining tribunal. The reader may turn to what I have said with respect to the analogous case of a mercantile cause (*ante*, page 150). Questions of this kind, with such scanty materials for solution, are necessarily attended with much uncertainty; and I am the more diffident in the opinion which I venture to express, because it does not quite accord with that of Boeckh. That the question here discussed was a doubtful one, may perhaps be inferred from this very oration, where the defendant by his plea raises the point of law, whether his adversary was entitled to sue him in the mining court. And now we come to consider the immediate subject of the speech.

Pantænetus, the plaintiff in the cause, purchased from one Telemachus a mine in the district of Maronea for ninety minas. It seems to have been a mine but lately opened, or perhaps transferred by Telemachus before it was opened; for the purchase-money had not been paid to the state. About the same time, and most likely for the purpose of this speculation, Pantænetus borrowed a hundred and five minas, that is to say, a talent from Mnesicles, and forty-five minas from Phileas and Pleistor. To secure Mnesicles, Telemachus conveyed to him, in his own name, the mine in question, together with thirty slaves. Pantænetus afterwards, having occasion to pay off these creditors, borrows a hundred and five minas from Euergus and Nicobulus, the latter of whom is the defendant in the present action. Of this sum a talent was advanced by Euergus, and forty-five minas by Nicobulus. The mine and slaves are then transferred to them by Mnesicles, by direction of Pantænetus; and they, being thus constituted the proprietors, grant a lease of the mine and slaves to Pantænetus, reserving to themselves as rent the interest of the hundred and five minas, *i. e.* a hundred and five drachms a month, or twelve per cent. per annum. There was a clause in the lease giving to Pantænetus a power of redemption within a certain time.

The reader will not fail to see, that this transaction, which was ostensibly a purchase, was really a loan of money, secured by the conveyance of

the mine and slaves. Boeckh thinks that this fiction was resorted to, because the mortgagee of a mine was not permitted, on default of payment, to take possession of his security, until he had obtained the judgment of a court of law. Considering the interest which the state had in the mines, it is not improbable that the title of a mortgagee might be thus far defective. Perhaps however Boeckh takes it too easily for granted, that the contrivance, which was in this case resorted to, of a sale accompanied with a lease and power of redemption, would enable the parties to evade the legal difficulty. Whether the Athenian law allowed such a fiction to prevail, may possibly have been one of the questions to which this affair gave rise. It is true that Nicobulus gives no hint in his speech, that there was any doubt as to the extent of his rights as purchaser; but it would hardly have suited his purpose to do so; and this being the opening speech in the cause, he perhaps waited until the question was raised by his adversary, and reserved his argument upon it for the reply.

Immediately after the conclusion of this transaction Nicobulus went abroad. During his absence, Pantænetus having failed to pay the interest of the borrowed money, Euergus proceeded to exercise his rights under the deed of sale. It appears—at least we may infer so much from the plaint in this case—that he entered upon and took possession of the mine and works, that he carried on the works for some time on his own account, obtained some ore, and appropriated it to his own use; and in particular, that he seized some silver which one of the labourers was bringing to Pantænetus for the express purpose of being paid into the state-treasury, and thereby caused Pantænetus to be a defaulter in his debt to the state, and have to pay double the amount. For these acts Pantænetus afterwards brought an action against Euergus, and got a verdict with two talents damages. What were the grounds of this verdict—whether it was that Euergus had no right of entry under the deed, or whether he had exercised his right in an illegal and oppressive manner; whether (as Nicobulus asserts) a prejudice was created against him by the introduction of irrelevant charges, or whether there were any other special circumstances in the case—we cannot determine.

Euergus was still in possession of the works, when Nicobulus returned to Athens. Nicobulus, seeing the position of things, and finding also that there were other creditors of Pantænetus who protended to have claims upon the mine, was desirous to get out of the affair and have his money back as soon as possible. After some negotiation, it was arranged, that he and Euergus, upon receiving their hundred and five minas, should transfer the mine and slaves to the nominees of Pantænetus, giving a conveyance and warranty of title in their own names. Nicobulus stipulated for himself, that Pantænetus should give him a release of all demands. This agreement was carried out. Pantænetus afterwards brought his action against Euergus, who appears not to have taken the precaution of obtaining a release. His success in that proceeding encouraged him (as the defendant says) to commence the present action; the main ground of which seems to have been, that Euergus had employed a slave of Nicobulus to do the illegal acts complained of, and therefore it was

to be inferred that Nicobulus acted in combination with him. Divers extracts from the plaint are quoted in the course of the speech; from which we see that the plaint (or rather the first part of it) ran as follows:

"Nicobulus has done me damage—in that he laid a plot to injure me and my property, and ordered Antigenes his servant to take away from my servant the silver, which he was bringing for a payment to the state in respect of the mine, which I purchased for ninety minas, and he caused me to be registered as a state-debtor for double the amount—and in that, after I had incurred the penalty to the state, he placed Antigenes his servant in my pit near Thrasyllus, and put him in possession of my works, although I forbade him to do so—and in that he persuaded my servants to sit in the foundry to my prejudice—and in that he refined the silver-earth, which my servants had obtained from the works, and he retains in his possession the silver from that silver-earth—and in that he sold my pit and servants contrary to the agreement which he entered into with me—"

In addition to these grounds of action, there were charges of assault and battery and other acts of outrage; all included in a single plaint, preferred in a mining action before the Thesmothetæ.

The defendant, in answer to these charges, denies all complicity with Euergus, contends that it was not likely that he should have ordered a slave to commit the alleged acts of violence, and that his absence abroad at the time when they were committed is a proof of his innocence. He contends also, without arguing the point very distinctly, that the proceedings of Euergus were authorised by the deed of sale. The verdict which had been found against Euergus compels him to speak somewhat cautiously on this point, and, not venturing directly to blame the jury, he attributes the plaintiff's success to his having surprised Euergus by irrelevant charges, and thereby created an unfair prejudice against him.

It is partly owing to this caution on the part of the defendant, or of the orator who composed his speech, that it throws so little light upon the relative positions created between these parties by their contract. It was not necessary however for the defendant to enter fully into the merits of the case, this being the trial of the *Paragraphe;* and he seems to have placed his main reliance upon the special pleas in bar of the action, which were three in number: 1. That the plaintiff had given him a release of all claims: 2. That he had joined in one plaint various causes of action, which could not be tried together before the same tribunal: 3. That the subject of the dispute did not authorise a mining action. The second of these objections may be compared to our demurrer for misjoinder of counts. The defendant complains that it had been improperly struck out of the pleadings; he does not say by whom; but we may fairly presume that he alludes to the presiding magistrate, who perhaps thought that the inadmissible charges might be treated as surplusage, and did not altogether vitiate the plaint. It is remarkable also, that the speaker insists upon his objection, notwithstanding that it did not appear on the face of the record, and asks the jury to give him the benefit of it.

As the laws, men of the jury, have allowed a special plea in bar of the action, where a man sues after having given a release and discharge, and as both these have been given to me by Pantænetus the plaintiff, I have pleaded, as you heard just now, that the action is not maintainable. I did not choose to forego this right, or that, when I had proved (among other things) that the plaintiff had released me and withdrawn his claim, it should be open to him to charge me with falsehood, and to use the argument, that, if anything of this sort had taken place, I should have pleaded in bar of his action. I determined to take my stand before you upon this ground, and to prove, both that I have never wronged the plaintiff, and that he sues me contrary to the law. If indeed Pantænetus had suffered any of the wrongs which he now complains of, he would clearly have sued me at that period, when the contract between us took place, as these actions last only for a month, and we were both in the country,[1] and it is usual with all men to vent their wrath soon after the offence, rather than after a long interval of time. Since however, without having sustained any injury, (as I am sure you will all agree, when you have heard the facts,) but elated by the success of his action against Euergus, he prefers a groundless and vexatious complaint, the only thing left for me, men of the jury, is, to prove before you that I have done no wrong, to produce witnesses confirming my statements, and endeavour to save myself. I shall only make this fair and reasonable request to you, namely, that you will kindly listen to what I have to urge in support of my special plea, and give your attention to the whole case: for, in all the multitude of causes tried at Athens, I think it will appear that no man ever commenced so impudent and vexatious a one, as this which the present plaintiff has ventured to bring into court. I will give you a history of all the facts from the beginning in the shortest possible compass.

Euergus and myself, men of the jury, lent a hundred and five minas to Pantænetus the plaintiff upon a pit[2] at the

[1] *I.e.* Nicobulus and Euergus.

[2] Ἐργαστήριον signifies any factory, workshop, or place of business; and at the mines of Laurium this name was given to one of the districts or compartments allotted to a tenant by the State. Pabst—“ein Gewerk in den Metallgruben bei Maronea.”

works in Maronea and thirty slaves. Of this loan forty-five minas belonged to me, and a talent to Euergus. The plaintiff (it so happened) owed a talent to Mnesicles of Colyttus, and forty-five minas to Phileas of Eleusis and Pleistor. Mnesicles becomes the vendor to us of the mine-pit and the slaves; for he had bought them for the plaintiff from Telemachus the former owner; and we then lease them to the plaintiff at a rent equalling the interest of the money, a hundred and five drachms a month. And we enter into an agreement, in which the conditions of the lease were stated, and the plaintiff had the power of redemption from us within a given period. This transaction took place in the month of Elaphebolion in the archonship of Theophilus; after which I set sail immediately for Pontus, while the plaintiff and Euergus remained at Athens. What occurred between them during my absence, I am unable to state; for they tell different stories, and the plaintiff himself does not keep to his own story, but sometimes says that he was forcibly ejected from his tenancy by Euergus contrary to the agreement; sometimes, that he caused him to be entered as debtor to the state; sometimes he gives

Böckh writes thus:

"The mines at Laurium were worked either by shafts (φρέατα, *putei*) or adits (ὑπόνομοι, *cunei*); and by neither of these two modes of working did they in the time of Xenophon arrive at the termination of the ore: for the chambering of the mines timber was probably imported by sea, which according to Pliny was the case also in Spain. Hobhouse mentions that one or two shafts have been discovered in a small shrubby plain not far from the sea on the eastern coast; and if the hole which Chandler saw upon Mount Hymettus was really, as he conjectures, a shaft, it follows that some at least had a considerable width, for the circular opening was of more than forty feet in diameter; at the bottom of the hole two narrow passages led into the hill in opposite directions. It was also the practice, according to Vitruvius, to make large hollows in the silver-mines. The pillars, which were left standing for the support of the superjacent mountain, were called ὅρμοι, and more commonly μεσοκρινεῖς, as they at the same time served for the divisions between the different compartments, or (as they were called) *workshops*, (ἐργαστήρια.) As these pillars contained ore, the proprietors were tempted by their avarice to remove them, although by law they were strictly forbidden so to do; in the time of the orator Lycurgus the wealthy Diphilus was condemned to death for this offence. The opening of new mines was called καινοτομεῖν, καινοτομία, and, on account of the great expense and risk, few would venture to undertake it. If the speculator was successful, he was amply remunerated; if unsuccessful, he incurred all his cost and trouble for nothing."

another account, just as it suits him. Euergus simply says that, as he did not get his interest, and as the plaintiff did not perform any other part of the agreement, he went and took what belonged to him from the plaintiff with his consent; that the plaintiff went away, and afterwards brought persons to make a claim to the property; that he (Euergus) would not relinquish his right to those persons, but did not object to the plaintiff's holding what he had taken a lease of, provided he would perform the terms of his contract. Such are the accounts I get from these men. I am sure however of this, that, if Pantænetus speaks the truth, and has been hardly treated, as he says he has been, by Euergus, he has recovered the sum at which he laid his damages; for he came into court before you and obtained judgment against him; and surely he ought not to get compensation for the same injury as well from the guilty party, as from me, who was not even in the country. On the other hand, if Euergus speaks the truth, it would appear that he has been harassed by vexatious proceedings; yet even in that case I ought not to be sued for the same matter.

I will first prove these statements, and produce the witnesses before you.

[*Witnesses.*]

That the same man who had originally purchased this property was the vendor of it to us—that the plaintiff by virtue of the agreement became lessee of the mine-pit and the slaves, they being our property—that I was not present at the transaction which took place afterwards between Euergus and the plaintiff, and indeed that I was not even in the country—that he commenced an action against Euergus, and never made any complaint against me—all this you hear from the witnesses, men of the jury. When I returned home, after having lost almost all that I sailed out with, I heard, and found it was the fact, that Pantænetus had left the works,[1] and that Euergus had taken absolute possession of what we had purchased. I was vastly annoyed, seeing that the thing had come to a pretty pass; for I must either

[1] ἀφεστηκότα. Reiske—"*destitisse ab exercendâ officinâ metallicâ.*" Schäfer—"*excidisse officinâ.*" Pabst—"das Gewerk verlassen und abgetreten."

carry on and manage the business in partnership with Euergus, or have Euergus for my debtor instead of the plaintiff, and draw up a new lease and enter into a contract with him; and neither of these alternatives was agreeable to me. Being displeased at the state of things which I tell you of, and happening to see Mnesicles who had sold us the property, I went up to him and complained that he had introduced such a person to me, and I asked him about the claimants and what it all meant. On hearing this, he laughed at the claimants, but said they wished to meet and confer with me, and he himself would bring us together and would advise the plaintiff to do everything that was right in regard to me, and he thought he should prevail on him. When we met—I need not go into particulars—the men came, who pretended to have lent money to the plaintiff on the mine-pit and the slaves which we bought from Mnesicles; and there was nothing straightforward or honest about them. As all their statements were shown to be false, and Mnesicles established the fact of our purchase, they give us a challenge, thinking we should not accept it, proposing that we should either take all our money from them and withdraw, or pay them their demands; for (they said) the security which we held was worth far more than what we had lent. The moment I heard this proposal, without even taking time for consideration, I agreed to take my money, and I persuaded Euergus to do the same. After the thing had gone thus far, and the time had come for us to receive our money, the persons who had made that offer said they would not pay it unless we would be the vendors of the property to them; in this at least showing some sense, men of Athens; for they saw the pettifogging tricks which this man was playing us.

To prove the truth of these statements, please to take these further depositions.

[*The Depositions.*]

When the thing stood in this way, and the persons whom the plaintiff had introduced would not part with the money, and it was manifest that we were rightfully in possession of what we had purchased, he begged, prayed, and entreated us to become the vendors. As he begged me so strongly, and was so pressing and urgent, I gave way upon this point also.

Seeing however, men of Athens, that he was an ill-conditioned person—that at first he abused Mnesicles to me, and had afterwards quarrelled with Euergus, with whom he was on terms of the closest friendship — that immediately after my return he pretended to have been glad to see me, but again, when it became necessary to do what was right, he lost his temper with me—that he was friendly with all men until he got some advantage and attained his objects, but afterwards fell out and was at enmity with them—I required that, if I withdrew and assumed the character of vendor in respect of his property, I should come to a final settlement with him and be discharged and released from all demands. This being agreed to, the plaintiff gave me a full discharge, and I, in pursuance of his request, became vendor of the property, to the same extent as I had myself purchased it from Mnesicles. Having then got back my money, and having done not a tittle of wrong to the plaintiff, by the Gods, I never imagined that, happen what might, he would bring an action against me.

These, men of the jury, are the facts, upon which you will have to give your verdict; these are the circumstances, under which I have pleaded a special plea in bar of this pettifogging action. I will produce witnesses, who were present when I was released and discharged by the plaintiff; and after that I will show, that the action is by law not maintainable Please to read this deposition.

[*The Deposition.*]

Now read the deposition of the purchasers—to show you that I sold the things at the plaintiff's request, to the persons whom he desired.

[*The Deposition.*]

Not only are these my witnesses, that I have been released and am now sued vexatiously; but Pantænetus himself is my witness also. For, when he brought his action against Euergus without suing me, he bore witness that he had no further claim against me; for surely, when the same wrongs had to be dealt with,[1] if he had the like claim against both,

[1] Pabst: "wo es sich um gleiche Vergehungen handelte, wenn er uns beide wirklich rechtmässig hätte ank'agen können."

he would not have sued the one, and forborne to sue the other. That the laws allow no fresh actions in cases which have been thus settled, you are aware, I presume, without my telling you: however—read them this law.

[*The Law.*]

You hear the law, men of the jury, expressly declaring, that there shall be no further actions in cases where any one has given a release and discharge. That both these[1] have been effected between the plaintiff and me, you have heard from the witnesses. In no cases where the laws have forbidden it ought people to sue, but especially not in these. Of things done by public authority it may be said, that they have been done unjustly or improperly; and of the decisions of a court of justice it may be alleged, that the court was led into error; and, with respect to the other cases mentioned in the law, a plausible objection may be raised to every one of them. But when a man has himself yielded and released his claim, it does not lie in his mouth surely, to object to his own act, and charge himself with injustice. People who sue contrary to any other of these provisions fail to abide by a settlement which others have made; but he who commences fresh proceedings for a claim of which he has given a release, fails to abide by his own settlement. Such a person therefore deserves the utmost severity.

I have thus shown you that he released me from all demands when I became vendor of the slaves; and the statute which you have just heard read proves that actions for such demands are not allowed by the laws. However, that none

[1] Pabst says in a note, that, as the Greek words *ἀφῆκεν* and *ἀπήλλαξεν* signify nearly the same thing, the meaning must be that "Pantænetus had not only released him from all demands, but brought an action notwithstanding."

He must have forgotten the similar passage in the last oration (orig. p. 952), where it is manifest that *ἀμφότερα* relates only to the words *ἀφῆκεν* and *ἀπήλλαξεν*. The orator there says: *ἃ τῷδε γέγονεν ἀμφότερα· καὶ γὰρ ἀφῆκε καὶ ἀπήλλαξεν.*

Pabst is quite right in supposing that the two Greek verbs have no distinct meanings; and there is little or no point in the phrase adopted by the speaker, that he had had "both a release and a discharge." I take it that Athenian lawyers, like English, occasionally used superfluous synonyms *ex abundanti cautelâ*. We say in deeds—"release discharge and quit claim."

of you, men of Athens, may suppose that I have recourse to this plea because I have the worst of it on the merits of the case, I will proceed to show you, that every particular of his charge against me is false. Read the record of the plaint:

THE PLAINT.

"Nicobulus hath done me damage, for that he laid a plot to injure me and my property, having ordered Antigenes his servant to take away from my servant the silver which he was bringing to be paid to the state for the mine which I purchased for ninety minas,[1] and for that he caused me to be registered as debtor to the treasury for double the amount."

Stop. All these charges, which he has now preferred against me, he made before against Euergus and got judgment in the cause. It has been proved to you in evidence at the commencement of my address, that I was out of the country when the quarrel took place between these men; however, it is apparent also from this plaint. For he has nowhere stated, that I have done any of these things, but, after premising that I laid a plot against him and his property, he says that I ordered my slave to do these acts, which is false; for how could I give such an order, when at the time that I sailed from Athens I could not possibly have any knowledge of what was going to take place here? Besides, what an absurdity it is, when he says that I laid a plot to disfranchise him and bring him to ruin, to have declared that I ordered a servant to do things which even a citizen would not venture to do to another citizen! What then is the meaning of this? I take it that, having no means of fastening any of these things on me on account of my absence abroad, as he wished to go on with his pettifogging action, he inserted a charge that I gave the order; for there was not the shadow of a case, if he had not done this. Read the next clause.

THE PLAINT.

"And for that, after I had incurred the penalty to the state, he placed Antigenes his servant in my pit near Thrasyllus

[1] This was most probably (as Böckh supposes) the premium or purchase-money for the mine. But Böckh is in error when he says that Pantænetus purchased the mine from the State. He purchased it from Telemachus, who had probably just taken his lease from the State, and the premium was not paid till after the transfer, and some time after the mine had been opened. See the Argument, page 220.

and put him in possession of my works, although I forbade him to do so."

Stop. All this likewise will be shown by the facts of the case to be a fabrication. He has declared that I placed the servant and he forbade me. This is impossible, when I was not in the country. Neither did I place any one, when I was in Pontus, nor did he forbid me, when I was not in the country. It is impossible. What drove him then to the necessity of thus declaring? I imagine that Euergus, when he was committing those trespasses for which he has given satisfaction, being on friendly and intimate terms with me, took my servant from my house, and placed him at his own works to keep guard. If then the plaintiff had inserted the truth in his plaint, it would have been ridiculous; for how do I wrong you because Euergus placed the servant there? To avoid this difficulty, he has been compelled to declare in such a way, in order that his charge may be against me. Read what follows.

THE PLAINT.

"For that he persuaded my servants to sit in the foundry[1] to my prejudice."

[1] The term κεγχρεὼν has given rise to some discussion. Pabst renders it—"in der Hütte wo die Metallkörner gesäubert werden." Reiske in his index calls it "taberna vel officina metallica, ubi metalla liquata granulantur, h. e. in minutos globulos contunduntur." Böckh discusses the whole matter in his Dissertation on the Silver Mines, from which the subjoined is an abbreviated extract:

"Upon the art of smelting in the foundries of Laurium nothing definite is known. That the Athenians made use of the bellows and of charcoal, is not improbable; the latter may be inferred from the account of the charcoal-burners of Acharnae. The art of smelting among the ancients was so imperfect, that even in the time of Strabo there was no profit to be gained by extracting silver from lead-ore with which it was mixed in small proportions; and the early Athenians had so slight a knowledge of the working of ore, that not only was that which had been thrown away as useless stone subsequently used, but the old scoriae were again employed for the purpose of extracting silver. According to Pliny, the ancients could not smelt any silver without some mixture of lead; he appears however only to mean ore in which the silver was combined with some other metal to which it has a less powerful affinity than to lead. At Laurium it was not necessary in general to add any lead, it being already present in the ores. Pliny states the manner in which argentiferous lead-ores were treated, and there can be no doubt this was the method adopted in Attica. The ore was first melted down to *stannum*, a composition of pure silver

Stop. This really is downright impudence. The falsehood of it is manifest, not only from my challenging him to deliver up those servants and his refusal to deliver them, but from every circumstance in the case. For what purpose did I persuade them? Perhaps, that I might get them into my own service. But, when the option was given me either to have them or to receive back my own money, I preferred to receive

and lead; then this material was brought to the refining oven, where the silver was separated, and the lead appeared half glazed in the form of litharge, which, as well as grey lead, the ancients called *galena* and *molybdaena:* this last substance was afterwards cooled, and the lead was produced."

* * * * *

"The expressions κέγχρος and κεγχρεὼν are obscure. The latter is a term used for a foundry in the Laurian silver mines without any account of its nature. Photius and the Rhetorical Lexicon state that it was a place where the ἀργυρῖτις κέγχρος and the sand from the mines were purified. It might then mean the impure substance from which the comminuted ore was washed. In this case it would have been called κέγχρος, or millet, from having been first bruised or washed down to the size of a grain of millet, in the same manner as it is said that in the Egyptian foundries the gold ore was ground down to the size of a vetch."

This supposition, however, the author refutes. After referring to the statement of Pollux, that the slacks of iron were called σκωρία, the flower of gold ἀδάμας, and the impurity of silver κέγχρος—and to that of Harpocration, that κεγχρεὼν meant the purifying place, where the κέγχρος from the metal was cooled—he comes to the same conclusion with Salmasius, that κέγχρος and *spuma argenti,* or lithargyrus, are identical.

"The expression"—says he—"receives some light from what is said of the flower of copper. For, when copper has been smelted, and the last impurity separated from it, it is again fused, and cooled in water; by this means an efflorescence is formed upon the surface of the metallic cake, which was called the flower of copper. This process is the same in reference to copper as that of which Harpocration speaks in reference to silver; and the κέγχρος produced in the silver foundries must have been an efflorescence, in shape like the pod of a vegetable, arising from the cake of silver. In the last stage of the refining of copper, particularly of the inferior kinds, something similar is formed according to the process now in use. It is probable therefore that this κεγχρεὼν at Laurium was the foundry where the silver which had been already fused was refined: the impurity detached in this stage was called κέγχρος, and perhaps consisted chiefly of glazed lead; and here the silver was again cooled with water. That Harpocration should state that the κέγχρος and not the metal itself was cooled, is natural enough in a grammarian of considerable authority on other subjects, but ignorant of metallurgy."

back my money, and that has been proved in evidence. However, read the challenge.

[*The Challenge.*]

Instead of accepting this challenge, he declined it; and yet see the charge which he makes immediately afterwards. Read the next clause.

THE PLAINT.

"And for that he refined the silver earth[1] which my servants had obtained from the works, and he retains in his possession the silver from that silver earth."

Stop. How is it possible again for these things to have been done by me, who was not in the country—these things for which you obtained a judgment against Euergus? Go on with the plaint.

[1] The ore from which the silver was obtained is generally called *silver earth* (ἀργυρῖτις γῆ or simply ἀργυρῖτις); but, that by this we are not to understand soft earth, may be collected from an expression of Xenophon, who says that the enemy could make no more use of the ores from these mines than of stones. The word *earth* in Greek is of very general application, and may include ores even of solid stone; the Romans also applied the same term to silver ore. The quality of the ore in the mines of Laurium is nowhere expressly stated; it is possible however to throw some light upon the subject by a few incidental accounts. As the works of Laurium are always called silver-mines, and as neither lead, copper, nor any other mineral is ever mentioned, it is evident that in early times at least they must have afforded ores extremely abundant in silver, more particularly as the ancients, from their imperfect knowledge of chemistry, could not make use of ores in which the proportion of silver was inconsiderable. This is also proved by the fact of the ore being called silver earth, and not lead or copper earth. Mines of the precious metals are usually more productive near to the surface of the soil than at a greater depth, and the quantity of silver contained in many ores diminishes in proportion as they recede from the surface; therefore, when the mining penetrated farther into the interior of the mountain, it is not impossible that they met with ores of inferior quality; which partly explains the diminution in the profit already alluded to. The ore of these mines appears moreover to have occurred for the most part in thick layers, since otherwise the whole mountain would not have been so far excavated that nothing was left but supports for the purpose of safety; whereas ores, in which the silver composes the larger part of the substance, usually occur in veins. Other less distinct traces would seem to prove that a considerable part of the ore was lead-ore containing a portion of silver.

THE PLAINT.

"And for that he sold my mine-pit and servants contrary to the agreement which he entered into with me."

Stop. This far exceeds all the rest. In the first place, he says "contrary to the agreement which he entered into with me." What agreement is this? We let our works to the plaintiff at a rent equalling the interest of the loan; that was all. Mnesicles had been vendor to us in the plaintiff's presence and at his request. We afterwards sold to others in the same manner, upon the terms on which we purchased, not only at the request, but at the entreaty of the plaintiff; for no one was willing to accept him as vendor. What then has the agreement of lease to do with the question? Why did you insert that clause, you good-for-nothing fellow? To prove that we sold again at your request, and on the very terms on which we had ourselves purchased—read the deposition.

[*The Deposition.*]

Even you then bear testimony; for, what we had purchased for a hundred and five minas, you afterwards sold for three talents and twenty-six minas. But who, having you for a vendor, would ever have given you a single drachm? To prove the truth of these statements, call me the witnesses who depose to them.

[*Witnesses.*]

Though he has had, as you see, the price which he agreed upon for his property—though he begged me at that time to become vendor for the sum which I had lent—this very man sues me for two talents besides. And the rest of the charges are still more shameful. Please to read now the rest of the plaint.

[*The Plaint.*]

Here he strings together a multitude of dreadful accusations against me: he charges assault and battery, outrage and rape, and injuries done to heiresses. But the actions for these several offences are distinct; they are not before the same magistrate, nor for the same penalties: assault and battery and charges of rape are tried before the Forty; cases of outrage before the Judges; injuries done to heiresses before

the Archon. And the laws allow exceptive pleas to those charges of which the magistrates to whom they were preferred have not cognizance. Read them this law.

[*The Law.*]

Although I had pleaded this with the other special pleas, and although the Judges have no cognizance of the matters for which Pantænetus brings his action, it has been struck out, and forms no part of the pleading. How this has occurred, it is for you to consider. To me it makes not the least difference, as long as I can produce the law itself; for he'll not be able to strike out of your minds the faculty of correct judgment and understanding.[1]

Now take the mining law. From this also I think I can show that the action is not maintainable, and that I am deserving of thanks rather than persecution. Read.

[*The Law.*]

This statute has clearly defined in what cases a mining action is the appropriate remedy. Let us see. The statute makes a man liable, who ejects another from his occupation: but I, so far from ejecting the plaintiff, put him in the possession and dominion of that, which another person was depriving him of, and I became the vendor of it at his request. Yes—says he—but actions lie in other cases where injuries are done concerning mines. Quite right, Pantænetus: but what are those cases? Where a man fills your pit with smoke[2]—where he attacks you with arms in hand—where he perforates within your boundaries. These are the other

[1] Auger—"on ne pourra effacer de vos esprits les idées de justice qui y sont gravées."

[2] τύφῃ. "*Si quis suffumiget;* h. e. si quis in cuniculis fumum excitet, qui vicinos operantes expellat aut suffocet." Reiske. Other manuscripts give the reading of ὑφάψῃ, upon which Böckh remarks—

"By arson, or *under-burning,* which is the exact meaning of the Greek word, we might either understand the burning of the wood used for supporting the mine, or the setting fire to the ores (a practice which was well known to the ancients) for the purpose of undermining the pillars which supported the overlying mass, after they had become infirm."

Schäfer would join both readings, ὑφάψῃ ἢ τύφῃ, observing—"mireris enim fumum commemorari, taceri ignem aliquanto perniciosiorem." As to this, see what I have said in the Argument, page 221.

cases; but surely I have done nothing of this sort to you and yours, unless you regard people who get back the money which they have rashly lent you as making an armed attack. If that is your belief, you have a mining action against everybody who parts with his money to you. But that is hardly just. For example—shall any man who purchases a mine from the state be allowed to sue in a mining court, disregarding the general laws, according to which all people are bound both to render and to obtain justice? How, if one man borrows money from another? How, if a man be slandered? if he receives blows? if he makes a charge of theft? if he does not get back an advance for property-tax? if anything else, in short, should occur? shall he sue in the mining court? I hardly think so. I take it that mining actions lie against persons who have shares in mines,[1] persons who bore through a strange mine, and get into their neighbours' boundaries; and generally, against persons engaged in mining operations, who do any of the things mentioned in the statute: but a man who has lent money to Pantænetus, and has had the utmost difficulty and trouble to get it back from him, is not to have the further infliction of being made defendant in a mining cause; most decidedly not.

That I have done no wrong to the plaintiff, and that the action by the laws is not maintainable, is easy to be seen from what I have already stated. As the plaintiff had no ground whatever to support his charges, as he had inserted falsehoods in his plaint, and was suing for claims of which he had given a release, last month, men of Athens, when I was about to come into court, just as the jurors had been assigned by lot, he came up and surrounded me with his friends, (the gang of persons who are in league with him,) and does a most atrocious thing.[2] He reads to me a long challenge, requiring

[1] Böckh supposes the word κοινωνοῦσι to designate *partners* in mines. And so Pabst translates it—"welche gemeinschaftlich Bergwerke besitzen." I am not clear that it means anything more than "*concerned in* mines or mining business."

[2] The defendant complains that the following trick was played him by his adversary. Just before the trial was coming on, Pantænetus, the plaintiff, brings him a challenge, drawn up in writing in the usual way, and reads it out, but does not show it to him. The terms which it proposed were, that the defendant should give up a slave to the torture; that, if the slave admitted the truth of the plaintiff's assertions, the

that a certain slave, who, he said, was acquainted with the facts, should be put to the question, and that, if the facts which he alleged were true, I should be bound to pay him his damages without assessment; if they were false, the questioner, Mnesicles, should estimate the value of the slave. After he had received sureties to the agreement from me, and after I had sealed the challenge—(not that I thought it was fair; for how could it be fair, that upon the body and life of a servant it should depend, whether I should be condemned to pay two talents, or the pettifogging plaintiff escape with impunity? but I, desiring to prevail by a great preponderance of justice, gave my consent)—after that, he summons me in the action again, as soon as he had taken back the deposits;[1] making it thus plain at the outset, that he would not abide even by terms of his own arranging. When we had come before the questioner, instead of opening the challenge, showing the

defendant should pay the two talents, the damages laid in the plaint; if not, he (the plaintiff) would pay for the injury done to the slave, according to the valuation of Mnesicles, who was to apply the torture and superintend the examination. Nicobulus accepted this challenge, disadvantageous as it was for him; seals the paper containing the terms, which thus became an agreement between the parties; and gave sureties (as was usual) for its performance. Notwithstanding this, the plaintiff immediately gives him a new summons in an action, apparently for the same cause, and in violation of the agreement, which had put an end to the original action; for the whole cause was staked upon the questioning of the slave. This was the beginning of the fraud. Afterwards, when they went before Mnesicles to examine the slave, Pantænetus produces a challenge containing different terms from those which he had read to the defendant; different at least in this respect, that it authorised the plaintiff himself to apply the torture, instead of Mnesicles. He had been enabled to play this trick by the hurry and confusion in which the challenge had been made and accepted, Nicobulus not having had time to see or make a copy or an extract from it. Nicobulus says that he submitted even to this artifice, and offered to deliver up his slave.

The account of this transaction, like the rest of the case, is exceedingly obscure.

[1] "Nam, si quæstiones processissent, judicio nihil fuisset opus. Sed mirum licuisse pecuniam semel depositam tollere." Wolf.

"Scilicet toto in negotio Pantænetus ex libidine utque sycophantam agnosceres egit. Itaque res supra dicitur πρᾶγμα πάνδεινον." Schäfer.

Whether these παρακαταβολαὶ were sums deposited as caution-money, or merely the ordinary court-fees, is uncertain. See Meier and Schömann, Att Proc. 620, and Appendix IX., page 377, to Vol iii. of this work.

contents, and then proceeding according to its terms to do what seemed right; (for, owing to the bustle on that occasion and the cause being about to be called on, it was done in this manner—I offer you this challenge—I accept—where's your ring?[1]—here it is—who's the surety?—this person here—and I took no copy nor anything else of the kind;) instead of proceeding in the way that I mention, he had brought another challenge, and insisted upon applying the torture to the man himself, and laid hold of him and began to pull him about, and misbehaved himself most grossly. And I reflected in my own mind, men of the jury, what an immense advantage it is to intimidate people by your style of conduct.[2] For it seemed to me, that I was suffering these indignities because I lived in a plain and straightforward manner, and that I was paying an enormous penalty for submitting to such treatment. However, as I should have been compelled, contrary to my views of propriety, to give a counter-challenge, I offered even to deliver up the slave.

To prove the truth of these my statements, read the challenge.

[*The Challenge.*]

After having declined these terms—after having declined the challenge which he himself gave in the first instance—I wonder what he can possibly have to say to you. That you may know who the person is, from whom he pretends to have suffered such dreadful injuries—behold him![3] This is the man who expelled Pantænetus; this is the man who was too strong for the friends of Pantænetus and the laws. For I myself was not in the country, and the plaintiff does not charge me with having been.

I wish to explain to you the trick by which he misled the former jury and obtained his verdict against Euergus, that

[1] The ring was for sealing the challenge; not for a pledge, as Hudtwalcker supposed. See Meier and Schömann, Att. Proc. 680.

[2] I follow Schäfer's interpretation—"quantum sit lucrum sycophantæ ita vivere, ut alii metu ejus percellantur."

Pabst, who reads with Reiske, *μὴ καταπεπλῆχθαι*, translates thus—"welch ein grosser Vorzug es sey, wenn man in den Lebensverhältnissen nicht allzu furchtsam ist."

[3] He exhibits to the jury the slave, Antigenes, a feeble old man, not likely to have committed the outrages complained of.

you may see he'll not stick at any sort of falsehood or impudence on the present occasion. Besides, you will find that the causes of action for which he now sues me have the same justification; which is the clearest proof, that Euergus has on the former occasion been the victim of fraud. The plaintiff, in addition to the rest of his charges, alleged that Euergus came to his house in the country and intruded into the apartments of his daughters (who were heiresses) and his mother; and he brought the laws concerning heiresses to the court. Not to this day has he ever appeared before the Archon, whom the laws appoint to attend to such matters, and before whom the offender is in peril either of corporal punishment or pecuniary fine, while the prosecutor seeks redress without any risk to himself; nor has he impeached either me or Euergus of any offence of this kind, but he made the accusation in court and got a verdict for two talents. It would have been easy, I take it, for Euergus, had he been aware beforehand (as by the laws he should have been) of the charge on which he was tried, to show the real justice of the case and obtain an acquittal; but in a mining cause, when accused of things which he could never have expected, it was difficult on the spur of the moment to clear himself of the calumny; and the indignation of the jurors, who were deceived by the plaintiff, found him guilty of the charge upon which they sat in judgment. Do you suppose that the man who deceived those jurors will hesitate to deceive you?—or that he comes into court relying upon the facts, and not rather upon his words and the witnesses who are leagued with him, (that dirty blackguard Procles, the tall fellow, and Stratocles, that most smooth-tongued and basest of mankind,) and on the whining face and the tears that he can assume so recklessly and so impudently? You, however, are so far from deserving any compassion, that you ought above all men to be detested for your proceedings—you who, after owing a hundred and five minas and not being able to pay the money, and then finding persons to lend it and enable you to satisfy your original creditors, have not only broken your engagements to them in relation to the loan itself, but seek even to deprive them of their civic franchise! In general, one may observe the borrowers of money giving up their property: in your case the creditor is in this condition; having lent a

talent, he has been condemned to pay two talents at the suit of a pettifogger. And I, who have lent forty minas, am defendant in this action for two talents. And upon a property, on which you have never been able to borrow more than a hundred minas, and which you have sold out and out for three talents and twenty minas, you have sustained damage, as it appears, to the amount of four talents. From whom? From my servant! that's what he means to say! Why, what citizen would give up possession of his property to a servant? Who would contend that my slave ought to be responsible for acts, for which the plaintiff has brought an action against Euergus and obtained a verdict? And besides—the plaintiff has himself released him from all charges of this kind. For the proper course was, not to bring such charges forward now, nor to insert them in the challenge in which he demanded him for the torture, but to commence the action against him and carry it on against me as his guardian.[1] As it is, he has commenced the action against me, and accuses the slave. The laws however do not allow this; for who ever commenced an action against the master, and charged the facts against the slave, as if he were his own guardian?

When any one asks him—"What case shall you be able to make out against Nicobulus?"—he says, "The Athenians hate money-lenders; Nicobulus is an odious person; he walks fast, talks loud, and carries a stick: all these things" (says he) "are in my favour." And he is not ashamed to talk in this style, and imagines his hearers don't understand that this is the reasoning not of an injured party, but of a false accuser. For my part, I don't look upon a money-lender as a wrong-doer, though I think you may fairly regard with displeasure certain persons of that class, who make a trade of it, and who care neither for humanity nor anything else but the lust of gain. For, as I have often borrowed money as well as lent it

[1] For what the slave did by command of his master, of course the master would be responsible in his own name. For what the slave did without such authority, Demosthenes says he ought to be sued in his own name, though the master would have to be joined as his *κύριος*, that is, his guardian and representative in law. We have but little information on this point, and cannot be certain whether Demosthenes states the law correctly, or whether, supposing him to state it correctly, the point is a technical or a substantial one. The reader may refer to what is said by Schömann in the Attic Process, page 572.

to the plaintiff, I am myself not ignorant of that class of people, and I don't much like them; at the same time I never defraud nor bring vexatious actions against them. I cannot see however why a man who has traded as I have, going to sea and incurring risk, and who has lent at interest his small profits, in order to accommodate his friends, and that his money may not be imperceptibly frittered away, should be set down as belonging to that class: unless you, Pantænetus, contend, that whoever lends money to you ought to incur the detestation of the public.

Please now to read the depositions, and let the jury see what sort of a person I am to those who lend me money and to those who ask my assistance.

[*The Depositions.*]

Such is the character which I, the fast walker, bear; and such is yours, Pantænetus, who walk gently. However, with respect to my gait or my address, men of the jury, I will speak the whole truth to you unreservedly. I am fully sensible—it has not escaped me—that I am not one of a class who are favoured by nature in these respects, and possess qualities advantageous to themselves. If I annoy people by doing what is of no use to myself, it is a misfortune, as far as it goes, undoubtedly. But what is to be the consequence? If I lend money to this or that person, must I be sentenced to a penalty for it, in addition to my other loss? Heaven forbid! The plaintiff cannot show that there is anything base or vicious about me; and among you all there is not one who knows anything of the sort against me. As to these external qualities, each of us, I imagine, is as nature happened to make him; and it is hard to contend with nature, when one has these defects, (or there would be no difference between man and man,) though it is easy enough to remark and criticise them in another. But what has all this to do with our dispute, Pantænetus? You have sustained many cruel injuries. Well; you have had satisfaction. Not from me? No; for I did you no wrong: otherwise you would never have released me, nor forborne to sue me when you determined on commencing proceedings against Euergus, nor requested the man who had so cruelly and grievously wronged you to take on himself the character of vendor. And besides,

how is it possible that I, who was not present and not in the country, can have done injury to you?

But let it be granted to him, that he has sustained the utmost possible injustice, and that all his present allegations are true—this, I presume, you will all acknowledge, that other people have suffered wrongs before now, of a more grievous nature than pecuniary wrongs; (for example, unintentional homicides, and outrages on what is sacred, and many similar things, are perpetrated;) yet in all these cases the injured parties are finally and conclusively barred, when they have come to a settlement and given a release And this rule of justice is so universally binding, that, when a man has convicted another of intentional homicide and clearly proved him to be tainted with pollution, yet, if he afterwards condones the crime and releases him, he is no longer entitled to force the same person into exile. Nor again, where the murdered man has released his murderer before he died, is it lawful for any of the relations to prosecute; but those whom the laws sentence, upon conviction, to banishment and exile and death, if they have been released, are by that word "release" at once absolved from all penal consequences. Then upon questions of life and all that is most precious shall a release be valid and binding, but on questions of money and claims of minor importance shall it be of no effect? Surely you will never allow this! The worst would be, not my failing to obtain justice before you, but your abolishing in our time a sound rule of practice, established ages ago.

THE ORATION AGAINST NAUSIMACHUS.

THE ARGUMENT.

ARISTÆCHMUS, one of the guardians of Nausimachus and Xenopithes, was sued by them, after they attained their majority, for rendering a false account and breach of his trust. He compromised the dispute with his wards for three talents, and received from them a release. Soon after this he died. Fourteen years afterwards the wards made a claim upon his four sons, alleging (as it would seem) that the release did not extend to such part of their estate as was received subsequently to the compromise, and that certain outstanding debts had been subsequently got in by Aristæchmus, or by the person whom he left to be guardian of his children. The total sum claimed from the four children was four talents; but, in commencing

legal proceedings, this demand was split by the claimants into eight, each of them bringing an action against each of their guardian's sons for thirty minas. The particular claim, which forms the subject of the present action, appears to have been a debt of one hundred staters, alleged to have been paid by a person in Bosporus, and which, together with the interest, might be estimated as equivalent to thirty minas. This view of the matter does not agree with that which is taken by Reiske and Schäfer; as the reader will see from the first of my notes to the oration.

Of the circumstances of the case we have but a meagre account; as the defendant, for whom this present speech was composed, relies mainly upon his special pleas, setting up 1, the release given to his father; 2, the statute of limitations. He shows however some reasons for inferring, that no part of the ward's estate had been got in by his father or guardian after the compromise, and that the demand is altogether unfounded and vexatious.

As the laws, men of the jury, have allowed a special plea, where a man sues after having given a release and discharge, and as my father has had both of these from Nausimachus and Xenopithes, who have commenced proceedings against us, we have pleaded, as you heard just now, that the action is not maintainable. I shall ask of you all what is just and reasonable; first, that you will give me a fair hearing; secondly, if you think that I am wronged and made defendant in an unfounded action, that you will give me the support which I am entitled to.

The damages laid in the action are, as you have heard, thirty minas; but the sum for which we are actually sued is four talents. For, there being two of them, they have commenced four actions against us, all for the same amount, each for three thousand drachms damages: and now, upon a nominal demand (in the plaint) of thirty minas, we are brought to trial for that large sum of money.[1]

[1] Reiske's explanation of this, (which, strange to say, has been approved of by Schäfer,) is as follows:

"Nausimachus et Xenopithes (junior) fratres, filii Nausicratis, a filiis Aristaechmi vitâ dudum defuncti, qui tutor ipsis olim fuisset, actione hæreditatis imminutæ aut æris alieni pupillis debiti, a debitoribus quidem redacti, a tutore autem pupillis non persoluti, repetebant, ab unoquoque filiorum Aristaechmi, qui quatuor erant, quaterna talenta et praeterea singula totidem (*h. e.* quatuor) semitalenta. Petebant itaque filii Nausicratis a filiis Aristaechmi universe octodecim talenta. Nam quatuor talenta sibi aiebant deberi ut aes interceptum; sed singulares hôc eodem de aere alieno actiones in singulos illos quatuor

The vexatious proceedings of these men, and their crafty designs against us, you will learn from the facts of the case. But he shall first read you the depositions, showing that they released our father from the charges which they made in respect of his tutelage; for it is on this ground that we pleaded our plea in bar of the action. Please to read these depositions.

[*The Depositions.*]

That they commenced actions against their guardian for breach of duty, and that they released those actions, and have received the sums of money agreed upon, you hear, men of the jury, from the witnesses. That the laws do not allow people to sue over again for matters which have been thus settled, I take it, you are all aware without my telling you; however, I should like to read you the statute itself. Read the law.

[*The Law.*]

You hear the law, men of the jury, plainly declaring the several cases in which there shall be no actions. One of them (quite as obligatory as the rest) is, that no man shall sue for claims of which he has given a release and discharge. Yet, although the release has been thus given in the presence of divers witnesses, and although the law plainly absolves us,

fratres instituebant, et litem unicuique praeterea semitalenta aestimabant."

This extraordinary misconception arises partly from the learned commentators not having observed, what is undoubtedly to be collected from the text of Demosthenes, that *each* of the sons of Nausicrates brought an action against *each* of the sons of Aristæchmus; making eight actions in all, and not four, as Reiske supposes. That this is so, is indeed apparent from the passage now before us; but is made abundantly clear by the words of the record cited in page 988—*παραδόντος ἐμοὶ τοῦ Ἀρισταίχμου.* The supposition that four talents are claimed in each action, in addition to the thirty minas, is pure imagination, there being nothing in Demosthenes to warrant it. Auger and Pabst have both understood it rightly. I subjoin their notes:

"Il y avoit quatre fils d'Aristechme; les deux adversaires redemandoient chacun à chaque fils de leur tuteur trois mille drachmes, ou trente mines; à eux deux ils redemandoient donc en tout huit fois trente mines, ou quatre talents."

"Da es zwei Kläger waren und vier Beklagte, und da jeder Kläger an jedem Beklagten dreissig Minen forderte, so kommen zwei hundert und vierzig Minen oder vier Talente heraus."

these men have arrived at such a pitch of impudence and audacity, that after the lapse of fourteen years from the time when they released our father, and twenty-two years from the commencement of the proceedings against him,[1] and after the death of our father, with whom they made the compromise, of the guardians, who after his death had the management of our property, of their own mother, who was acquainted with all these particulars, of arbitrators and witnesses and (I may say) almost everybody, looking on our inexperience and necessary ignorance of the facts as a godsend for themselves, they commenced these actions against us, and dare to make an assertion which is neither true nor honest. They say that they did not sell their patrimony for the money which they received, nor did they give up their estate, but that all the debts and furniture, and indeed all the money that was left to them, is still theirs. I know by report, that Xenopithes[2] and Nausicrates[3] left their whole property in outstanding debts, and possessed very little tangible property; and that, after the debts had been got in, and a few articles of furniture and some slaves had been sold, their guardians purchased the lands and lodging-houses, which these men received from them. If there had been no dispute about these matters before, if there had been no legal proceedings for mal-administration of this property, it would have been a different case: but as these men charged our father with general breach of his guardianship trust, and, after taking legal proceedings upon such charge, recovered compensation, all these matters have been released. For of course these men did not prosecute their actions for the mere name of "breach of trust," but for the money; nor did the guardians buy off the name only, but the claims, for the money which they paid.

That for not a particle of the debts which my father got in before the discharge, or (in short) of the money which he

[1] γεγραμμένοι—Reiske—"*patrem male gestæ tutelæ detulerunt ad judicem reumque egerunt.*" Pabst—"sie ihn belangt hatten."
Schäfer observes—"Mirum inter petendum et transigendum octos annos interfuisse." It seems strange also, that the term γεγραμμένοι should be applied to a civil action. And therefore I am inclined to think it has reference to a public prosecution, brought against Aristæchmus during the minority of his wards. See page 991, (orig.)

[2] The uncle of the plaintiff.

[3] The father of the plaintiff.

received under the guardianship, have these men a right of action against us, after having withdrawn from their claims, I think you have all clearly learned from the laws themselves and the release. That the sums in question could never have been collected afterwards, (for that is the fabrication by which they seek to mislead you,) I will proceed to prove. They will hardly venture to allege that my father received them; for he died three or four months after his arrangement with my opponents: and I will show that it is impossible for the money to have been received by Demaretus, our testamentary guardian; (for his name also they have inserted in the plaint.) Our strongest witnesses are the complainants; for it will appear that they have never brought an action against Demaretus in his lifetime: but, independently of that, any one who looks attentively at the case itself will see, not only that Demaretus never received the money, but that it is impossible he ever should have received it. For the debt was in Bosporus; and Demaretus never went to that place; how then could he have got it paid? It may be said perhaps, he sent some one to collect it. Just look at the matter in this way—Hermonax owed these men a hundred staters, which he had received from Nausicrates. Aristæchmus was their guardian and curator for sixteen years. Well then; the debt which Hermonax paid with his own hand after these men had attained their majority, he did not discharge when they were minors; for of course he did not pay the same money twice. Now would any man be so foolish as voluntarily to pay a debt (upon a demand by letter) to a person not entitled to it, after having for so long a period evaded payment to the rightful owners? I should hardly think so.

To prove the truth of these statements—that our father died immediately after the arrangement—that our opponents never brought an action against Demaretus for this money—and that Demaretus did not go at all to sea and never made a voyage to Bosporus—take the depositions.

[*The Depositions.*]

It has thus been made clear to you from the dates and the depositions, that our father did not get payment after the release—that no one would have paid the money voluntarily, if Demaretus had sent a person out for it—and that he was

not likely to make a voyage or go to Bosporus. I wish now to show you, that their whole statement of the case is a falsehood. They have inserted in the plaint which they are now prosecuting, that we owe the money, inasmuch as our father received payment of it and passed it over to them as an outstanding debt in his guardianship account. Take the record, if you please, and read it.

[*The Plaint.*]

You hear it stated in the plaint—"inasmuch as Aristæchmus passed the debt over to me in his guardianship account." But, when they brought an action against my father for breach of his trust as guardian, they stated the contrary to this; for they treated him as not having rendered an account, and made that specific charge. Read the plaint in the action which they then brought against my father.

[*The Plaint.*]

In what account do you charge that he gave up the debt to you, Xenopithes and Nausimachus? For at one time you brought actions against him and demanded money, on the ground that he refused to render an account: at another time you sue on the plea that he handed over something to you. If you may bring your pettifogging actions on both grounds, first demanding compensation because he did not give something up to you, and then suing because he did give it up, there's nothing to prevent your looking out hereafter for some third ground, to commence fresh proceedings upon. But the laws do not allow this: they say, that actions shall only be brought once against the same party for the same cause.

To show you, men of the jury, that they have not only sustained no wrong on the present occasion, but are suing us contrary to all the laws, I will cite to you also this statute, which expressly declares, that, if five years have elapsed, and the orphans have brought no action, their right of action for all claims arising out of the guardianship shall be barred. He shall read you this law.

[*The Law.*]

You hear the law, men of the jury, declaring positively that, if they bring no action within five years, their right of

action shall be barred. Well, we commenced an action; they may say. Yes, and you settled it too: therefore you have no right to take any further proceedings. It would indeed be monstrous, when for the original injury the law does not allow actions to be brought after five years by orphans against their unreleased guardians, that you should now in the twentieth year maintain an action against us, the children of your guardians, for matters upon which you gave them a release.

I hear however, that they will avoid all argument upon the laws or the facts of the case, but are prepared to assert, that a large property was left them and they were defrauded of it; and for proof of this they will refer to the magnitude of the damages claimed in their original suit, and will deplore their orphan state, and go through the details of the guardianship accounts: these and such as these are the points on which they rely, and by means of which they think to impose on you. For my part, I think that the magnitude of the damages claimed in those actions is a stronger proof for us, that our father was sued vexatiously, than for them, that they were defrauded of a large property. For no one, if he could establish a claim for eighty talents, would have taken three talents to withdraw; but any guardian, defending an action for such heavy damages for breach of trust, would have given three talents, to buy off the risk and the natural advantages which then belonged to these men. For they were orphans and young, and their characters were unknown; things that with you, as every one says, outweigh a multitude of arguments.

I think also I can show, that you ought not to listen to a word from them on the subject of the trust. For let it be conceded to them, that they have sustained the utmost possible injustice, and that all their present allegations are true —this, I presume, you will all acknowledge, that other people have suffered wrongs before now, of a more grievous nature than pecuniary wrongs; (for example, unintentional homicides, and profane outrages, and many similar offences, are perpetrated;) yet in all these cases the injured parties are finally and conclusively barred, when they have come to a settlement and given a release. And this rule of justice is so universally binding, that, when a man has convicted another of intentional homicide, and clearly proved him to

be tainted with pollution, yet, if he afterwards condones the crime and releases him, he has no longer the right to force the same person into exile. Nor again, where the murdered man has released his murderer before he died, is it lawful for any of the relations to prosecute; but those whom the laws sentence, upon conviction, to banishment and exile and death, if they have been released, are by that word "release" at once absolved from all penal consequences. Then, upon questions of life and all that is most precious shall a release be valid and binding, but on questions of money and claims of minor importance shall it be of no effect? Surely you will never allow this. The worst part of it would be, not that I should fail to obtain justice before your tribunals, but that a sound rule of practice, established time out of mind, would now be abolished.

"They did not let our property"—perhaps our opponents will say. No; because your uncle Xenopithes did not wish it let, but, after the prosecution had been instituted by Nicidas,[1] persuaded the jury to allow him to manage it, as everybody knows. "The guardians plundered us grossly." Well; you have received from them the compensation which you agreed to take; and surely you are not to get it again from me. But, that you may not suppose for a moment, men of the jury, that there is anything in the point—although it is manifestly inequitable that, after having settled with the offending parties, they should accuse persons who know nothing about the matter—notwithstanding this, Xenopithes and Nausimachus, if you believe that your case is so wonderfully good, return us the three talents and then go on with it. As you got so much for not pressing these charges, you are bound to hold your tongues until you have returned the money: you must not make the charges and keep the money too; that is the extreme of unfairness.

Very possibly also they will talk of the galleys which they have equipped, and say that they have expended their property for your benefit. That they will assert what is false—that they have wasted a considerable part of their substance, while the state has had but a trifling portion of it, and that they will claim at your hands a gratitude which they have

[1] See the second Appendix to this volume.

not earned or merited—all this I will pass by, men of the jury. I hold myself, that you ought to have a feeling of gratitude to all who bear the public burdens. But to whom should you be most grateful? To those who, while they perform that service which is useful to the state, do not create what every one will say is a shame and a reproach. Now those persons who in serving the public offices have dissipated their private property, bring odium upon the state instead of advantage; for no one ever blames himself, but says that the state has deprived him of his substance. Those on the other hand, who discharge cheerfully the duties which you assign to them, and at the same time preserve their property by the general prudence of their lives, are not only preferable to the other class in this respect, that they both have been useful and will be so again, but also because you get their services without reproach. It will appear, that we have so conducted ourselves in relation to you: of these men I shall say nothing, for fear they should charge us with calumniating them.

I shall not be surprised if they try to shed tears and move your compassion. I conjure you all on the other hand to remember, that it is infamous, or rather iniquitous, after having wasted their substance in gluttony and debauchery with Aristocrates and Diognetus and men of that sort, in a scandalous and profligate manner, to come now with crying and whining, in order to get the property of other people. You had reason to weep for your former conduct: this is not the time to weep, but to show that you never gave a release, or that you can sue again for the matters released, or that it is right to commence an action twenty years afterwards, when the law has prescribed five years as the limit. These are the points which the jury have to determine. If they are unable to show these things, as they will be unable, we entreat you all, men of the jury, not to abandon us to the mercy of our opponents, not to give them a fourth property in addition to three others which they have mismanaged—that namely which they received from their guardians without dispute, that which they got to compromise their actions, that which they lately wrested from Æsius by a judgment—but suffer us, as we are entitled, to retain what is our own. It is of greater service to you, remaining in our hands, than if it was in

theirs; and surely it is more just that we should have what belongs to us, than that they should have it.

I see no reason to add anything more; as you seem fully to understand what has been said. Pour out the water.

THE ORATION AGAINST BŒOTUS—I.

OR, THE ORATION FOR THE NAME.

THE ARGUMENT.

The proceeding which gave rise to the present speech was one of a singular nature, for which no parallel can be found in our own law, but for which the usages of Attic life seem to have afforded a reasonable ground.

Mantias, the father of the plaintiff, was a citizen of the Acamantian tribe and township of Thoricus. He married a daughter of Polyaratus, a widow, with whom he received a portion of a talent, and by whom he had two sons, the plaintiff, and another who died young. The plaintiff was brought up in his father's house, named Mantitheus, and registered in that name in his township. Mantias at the same time had a mistress, named Plangon, the daughter of Pamphilus, an Athenian citizen. By her he had two sons, whom for many years he did not acknowledge; but after his wife's death he seems to have married Plangon, and her eldest son, (the present defendant,) soon after he had grown to manhood, took legal proceedings to establish his own and his brother's birthright.

The claim was resisted, and the dispute referred to arbitration; when Plangon resorted to an extraordinary artifice to procure a judgment in her son's favour. She persuaded Mantias to stake the cause upon an oath to be tendered to her before the arbitrator, on the terms that, if she swore the children were his, he should adopt them, if she declined to swear it, he should be quit of them altogether; and she gave him a solemn promise on oath, that she would decline the oath when tendered to her, stipulating to receive a sum of money, which was deposited for her in the hands of a third party. Notwithstanding this promise, when the oath was tendered to her before the arbitrator, she accepted it, fathered the children on Mantias, and caused the award to be pronounced against him.

As to the tendering of oaths, the reader is referred to Vol. III. Appendix X. page 384.)

The award being under the circumstances conclusive against him, Mantias took the sons of Plangon to the meeting of his clansmen at the Apaturia in the usual way, and entered them in the register, the elder in the name of Bœotus, the younger in that of Pamphilus. A few years after, and before he had introduced them to the members of his township, Mantias died. Bœotus, dissatisfied with the name given to him by his father, which was that of his maternal uncle, took the step which led eventually to the present action. He went

to the townsmen of Thoricus, and got them to register him in the name of Mantitheus, alleging that he, being the eldest brother, was entitled to the name of his paternal grandfather. The exact time when this took place is not mentioned; nor is the sequence of events by any means clear.

(On the subject of Attic names, see Becker's Charicles, Excursus I. page 219. As to the registers of the clan and the township, see Vol. III. page 274, and the first Appendix to this volume.)

Mantitheus, the present plaintiff, after his father's death, received his half-brothers into the house, and consented to share the inheritance with them. He claimed however a talent out of the estate, as the marriage portion of his mother. Thereupon Bœotus set up a counter-claim of a hundred minas, as the portion which Mantias had received with his mother Plangon. Under the advice of friends, they divided among them the bulk of the effects, and left the house as a reserve fund, to abide the issue of this dispute.

I have said that Plangon seems to have been married to Mantias after his first wife's death, which happened many years before his own. This fact is not indeed mentioned anywhere in the plaintiff's speech; he says on the contrary, that even after his mother's death he would not bring Plangon into his house, and he insinuates that there never was any marriage between them; but he does not expressly deny it, and from the absence of any express denial, as well as from the concessions of the plaintiff himself, the fact of Plangon's marriage must, as I conceive, be inferred. For, had she never been more than a concubine, her sons could have had no heritable rights.

Mantitheus having commenced a suit against his half-brothers for his mother's portion, and they a similar one against him, both were referred to the arbitration of one Solon. A good deal of time having been wasted, through the wilful delays (as the plaintiff Mantitheus alleges) of his opponents, Solon died without having made any award. The causes were then referred to another arbitrator, who gave judgment in both for Mantitheus. In that where Bœotus was plaintiff he had attended, but offered no evidence to support his case; in the other he suffered judgment to be given against him by default. He disputed however the legality of the latter judgment, on the ground that he had been sued in the wrong name; and Mantitheus found himself compelled to commence a fresh suit against him in the name which he had improperly assumed. This (as we learn from the second speech against Bœotus, p. 1013,) occurred in the eleventh year after the father's death.

Meanwhile Mantitheus had been annoyed in various ways by Bœotus and his brother. They had made other pecuniary demands upon him, and succeeded in recovering them. Bœotus, having on one occasion come to blows with him, cut himself afterwards in the head, and charged his brother before the Areopagus with having maliciously wounded him. He conducted himself so profligately, and kept such bad company, that Mantitheus, having a grown-up daughter, was compelled to leave the house which the father had left them. The identity of names had been attended with some unpleasant occurrences, besides that already mentioned. Mantitheus

having been elected to a military command, Bœotus pretended it had been conferred on himself. A judgment having been recovered against Bœotus in the assumed name, he gave out that his brother was the party liable. A charge of desertion had been preferred against Bœotus, and the plaintiff had been summoned upon it. And the defendant's general conduct was so extravagant and reckless, that his brother was in continual fear of being mistaken for him.

Under these circumstances Mantitheus commenced an action against Bœotus, in order to compel him to abandon the name which he had assumed. The arguments in the plaintiff's speech are chiefly upon the law of the case, to show that the assumption of his name was a wrongful act, which subjected Bœotus to an action.

He contends on general grounds, that a son had no right to assume a different name from that which his father had given him; that such a thing as two brothers having the same name was wholly unprecedented; this being so, as the facts of the case established that he (the plaintiff) had by the gift of his father a prior title to the name of Mantitheus, the defendant's usurpation of it was illegal. Even were Bœotus the elder by birth, which the plaintiff denied, the seniority in regard to name belonged to the plaintiff; for Bœotus was only to be regarded as the son of Mantias from the time of his introduction to the clansmen.

There were reasons both of a public and a private nature, why the action ought to be maintainable. It was manifest, as both plaintiff and defendant were sons of the same father, if their personal names were the same, there would be no means of distinguishing them. Each would be called "Mantitheus son of Mantias of Thoricus." This would lead to ambiguity and confusion. If either of them were nominated to any public office, such as that of Choragus or Gymnasiarch, it would be uncertain which of the brothers was intended; each might endeavour to shift the burden on the other, and the public service would be neglected. Some of the most important departments of the administration might suffer in this way; as the collection of the property-tax, or the musters of troops. When the nomination was to an office of honour or profit, as to that of Archon or Juror, mischief would follow from the opposite endeavour. Each would contend that he himself was the party chosen; and this would lead to unseemly wrangling and contests at law.

The mischiefs of a purely private character were no less serious. The pseudo-Mantitheus might commit offences or get into scrapes, of which the blame or the penalty might fall upon the real Mantitheus. Nothing was more likely, when they looked at the persons with whom Bœotus associated, and his vicious and profligate course of life. Should a civil or criminal charge be brought against him, his brother, from the confusion of names, might become amenable to legal process. If a judgment were recorded against the pseudo-Mantitheus, the real Mantitheus might be liable to execution, or become a state-debtor; or supposing it to be known at the time who the real debtor was, after the lapse of some years, if the debt were not paid, the two brothers might be confounded, and the debt of Bœotus might be enforced against the plaintiff's children. Again,

some private enemy of Bœotus, knowing how his affiliation had been procured, might hereafter denounce him as an alien, and indict him for usurping civic rights. Many similar cases might be supposed. The plaintiff, so long as he had the same name, was continually liable to be implicated in the defendant's misconduct or misfortune. Some annoyances had already occurred; others were likely to occur again; and it was not just that he should be exposed to such perils.

The modern reader may be surprised, that a complaint of this kind should have been brought before the Athenian tribunal. In our own times it is easy to designate an individual in such a way that he cannot be mistaken. John Smith is distinguished from numerous others who bear the same name by being described as "John Smith of number 100 Cheapside in the City of London tailor." But in Athens the custom was to describe a man only by his own name and that of his father and his township. This was his address, his legal title and addition; this, and nothing further, was entered in the public records and documents. (See the first Appendix to this Volume.) It became desirable therefore to avoid the multiplication of names; and there was no great difficulty in avoiding them in a small community, such as that of an Athenian township.

Although there is no parallel in our own law for an action such as the present, there are proceedings to prevent acts of injustice of a somewhat similar character. I allude to applications for an injunction to prevent the adoption of a name or title for a journal or periodical, which has already been assumed by another journal or periodical; or to restrain the piracy or imitation of labels to a patent medicine, or the like.

The form in which this action was presented to the court does not appear. I conceive however, that there was a demand for compensation in damages, which were laid at a small amount, as the plaintiff's main object was to compel the defendant to drop the name of Mantitheus. A verdict for the plaintiff would have had the desired effect; for, if Bœotus had continued to use the name, another action might have been brought; and so on, *toties quoties*, with an increase of damages for contumacy.

Reiske infers from a passage in the second action against Bœotus, (page 1013,) that the plaintiff lost the verdict in this action. But this, as Schäfer observes, does not prove it.

I ASSURE you by the Gods, men of the jury, it is out of no litigious spirit that I commenced this action against Bœotus: I was aware, it would seem strange to many people, that I should commence an action because a person chose to have the same name as myself: but the consequences that would result, if I did not bring this matter to a settlement, made it necessary to have the case tried before you. Had the defendant claimed to be the son of another father, and not of mine, I might well have been regarded as a meddling body, for caring by what name a person called himself. But

he commenced legal proceedings against my father, and leaguing himself with a gang of pettifoggers, Mnesicles, whom probably you all know, and Menecles, the man who convicted Ninus,[1] and some others of the same description, contended in the suit that he was my father's son by the daughter of Pamphilus, and that he was cruelly treated and excluded from his civic rights. My father—for the whole truth shall be told you, men of the jury—fearing to come into court, lest some one to whom he had given offence by his political acts should take this opportunity of attacking him, and at the same time being deceived by the defendant's mother—for she had sworn that, if he tendered her an oath[2] upon the subject, she would not swear it, and in that case their dispute would come to an end, and she had bargained for a sum of money to be deposited with a third person[3]—on these conditions, I say, my father tenders her the oath. She accepted it, and swore that not only the defendant, but his brother also, her other son, was my father's child. As she had done this, it became necessary to introduce them to the clansmen, and there was no excuse left. He introduced them, he adopted them as his children; (to pass over what intervened,) he enters the defendant at the Apaturia[4] by the name of Bœotus in the register of his clansmen, and the other one by the name of Pamphilus: I had been registered by the name of Mantitheus. It happened that my father died before the entries were made in the register of the townsmen; and the defendant went and entered himself in the township register by the name of Mantitheus instead of Bœotus. How greatly this damages not only me but you, I will explain, when I have produced witnesses to confirm my statements.

[1] "Ulpien, dans ses commentaires sur la harangue de Démosthène touchant la fausse ambassade, parle de cette même Ninus, et dit qu'elle fut accusée par Ménéclès de composer pour les jeunes gens des philtres amoureux."—Auger.

[2] As to the nature of this oath, see Vol. III. Appendix 9, page 384.

[3] μεσεγγυησαμένης ἀργύριον. "Ex argumento et ipsis in Bœotum orationibus apparet, Mantiam pollicitum esse Plangoni pecuniam apud sequestem depositam aut sponsoribus datis." Wolf.

Reiske in his Index interprets it differently; as if Plangon had deposited money as security for keeping her promise. Pabst renders it—"nachdem sie eine Geldsumme als Pfand sich hatte anweisen lassen."

[4] See Volume III. Appendix 6, page 274.

[*Witnesses.*]

The manner in which my father entered us in the register you have heard from the witnesses: I will now show you, that, as the defendant did not choose to abide by these entries, I have brought the action necessarily and justly. Surely I am not so wrong-headed and unreasonable, as, after having consented (since my father adopted these men) to take only a third part of the inheritance, the whole of which was mine, and after acquiescing in that arrangement, to engage in a family quarrel [1] about a name, unless for this reason, that for me to change my name would draw with it the deepest degradation and the reproach of cowardice, while for the defendant to have the same name as myself would on many accounts be impossible.

In the first place, (to begin with public matters before private,) in what manner will the state give its command to us, if anything is required to be done? I suppose the tribesmen will nominate us in the same way as they nominate others. Well then; they will nominate me as Mantitheus the son of Mantias of Thoricus, if they propose me for choragus or gymnasiarch or feaster of the tribe, or for any other office. By what then will it appear, whether they nominate you or me? You will say they have appointed me, and I shall say it is you. Suppose, after this, the Archon summons us, or any other magistrate before whom the case is brought: we do not comply, we do not perform the duty: which of us will be amenable to the legal penalties? And in what manner will the Generals enter our names, if they put us in a board of tax-payers, or if they appoint either of us a trierarch? Or if there be any military expedition, how will it appear which of us is the person on the muster-roll? How, if any other functionary impose a public charge; for example, the Archon, the King-archon, the Umpires of prizes—what sign will distinguish the person intended? Perhaps they will affix "the son of Plangon," if they enter your name, and the name of my mother, if they enter mine. And who ever heard of such a thing? By what law can such a description be appended,

[1] ζυγομαχεῖν—Reiske in his Index—"cum aliquo contendere, cui es necessarius, a quo avelli nequeas, cum quo necessaria tibi sit et inevitabilis vitæ consuetudo." Pabst—"einen Familienhader erheben."

or any other addition besides the name of the father and the township? And these being both the same, a pretty confusion must result.

Again—suppose Mantitheus son of Mantias of Thoricus were summoned as juror: what should we do? Should we both go to the bench? By what token will it be known whether he has summoned you or me? Or, by Jupiter, suppose the state elects to any office by lot; as to that of Councillor, Judge, or any of the rest: how will it be known which of us is appointed?—unless a mark is to be attached to the brass plate,[1] as there might be to anything else; and even then the people will not know to which of us it belongs. He then will say he is appointed, and I shall say I am; and the only thing left will be to go before the court. So in each of these cases the state will impanel a jury for us; and of that right, which is common to all, namely, to hold the office to which one is chosen by lot, we shall be deprived; instead of this, we shall abuse one another, and the successful talker will get the office. And which would be most advantageous for us—to get rid of our existing dissensions, or to begin quarrelling and wrangling afresh; which we must inevitably do, when we have a dispute about an office or anything else? But how will it be—for we must examine every imaginable case—if either of us, before he goes to the ballot, should persuade the other to give him up the office, in case of his being drawn for it? And what is this but one man balloting with two balls? And shall it be in our power to do with impunity a thing which by law is punishable with death? Aye, but we shall not do it. I know that; at least I can speak for myself: but it is not right that there should be individuals exposed to such a penalty, when it may be easily avoided.

Well: I have shown the damage which the state suffers. What is my own private damage? Observe how serious it is, and consider if there is reason in what I say. In fact, the damage done to me is far more grievous than what you have heard. You all know that he was intimate with Menecles and his set in that person's lifetime, and now he associates with others who are no better, and has the same pursuits and objects, and wishes to be thought an orator; and, by Jupiter,

[1] As was the practice in the election or impanelling of jurors. See Article Δικαστής in the Archæological Dictionary.

perhaps he is one. Suppose in course of time he commences the same kind of proceedings as those persons—I mean indictments, presentments, informations, arrests—and in any such proceeding—(for the accidents in human life are numerous, and even the cleverest people, when they are too arrogant, you know how to keep within bounds on all occasions)—suppose he incurs a fine to the state: why will it be recorded against him more than against me? Perhaps, it may be said, because everybody will know which of the two was amerced. Very good: but suppose (what may easily happen) that time has elapsed and the debt is not paid; why will it be entered against his children more than against mine, when the name and the father and the tribe and all particulars are the same? Again—suppose a man sues him in ejectment, not pretending to have any claim against me, and afterwards, when he has established his right in the suit, enters the record of the judgment:[1] why will the judgment be entered against Bœotus rather than me? How will it be, if he fails to pay any of the property taxes? how, if any other suit be commenced, or (to speak generally) if any unpleasant report be spread, concerning the name? Which of the people will know whether it is I or whether it is he, when there are two named Mantitheus by the same father?

Now take another case. Suppose he were prosecuted for evading military service, dancing as a chorister when he should be campaigning—as on this late occasion, when the rest went over to Tamynæ, he was left behind here and celebrated the feast of Cups,[2] and stayed and danced in the chorus at the Dionysia, as all you that were at home witnessed; and, after the troops had left Eubœa, he was summoned on a charge of

[1] Κυρίαν δὲ ποιησάμενος ἐγγράψαι. Pabst. "Aber doch durch schriftliche Eintragung seiner klage Rechtgültigkeit verschaffte."

As to the ἐξούλης δίκη, see Meier and Schömann, Attic Process, page 486; and Volume III. of this work, page 391. Reiske in his notes gives a pretty clear explanation of this passage. No danger could accrue to Mantitheus in the supposed case, until the record of the judgment; because Bœotus would be summoned to appear, called upon to plead, interrogated before the magistrate, &c.; in short all the proceedings in the action would be taken against him; but when once the judgment was entered, it would in effect be a judgment against the real as well as the *soi-disant* Mantitheus: for after a lapse of time the actual proceedings might be forgotten, while the record would remain.

[2] See Volume III. Appendix VI. page 284.

desertion, and I, who commanded the division of my tribe, was compelled to receive the indictment, as it was against my own name coupled with my father's;[1] and, if pay had been provided for the juries, they would undoubtedly have brought me into court. If the affair had not occurred after the sealing of the boxes, I should have called witnesses to prove it.

So much for that. Now suppose he were summoned for usurpation of civic rights. He makes many enemies, and the way in which my father was compelled to adopt him is no secret. You certainly, at the time when my father refused to acknowledge him, thought that his mother spoke the truth; but when, with his birth thus established, he begins to make himself disagreeable, you'll change your minds some day and believe my father's story. How if, in fear of being convicted of perjury for the aid which he lends to his associates, he should allow judgment to go by default against him in such a proceeding? Do you think it is a trifling disadvantage, men of Athens, to be for one's whole life the partner of this man's character and conduct?

I beg you to observe, that my alarm even on these last-mentioned grounds is not imaginary. Bœotus has already, men of Athens, had some indictments preferred against him; and the obloquy extends to me, who am wholly innocent. And he laid claim to the office, to which you elected me; and many unpleasant things have occurred to us through the name. I shall produce witnesses, and give you full proof of every particular.

[*Witnesses.*]

You see the consequences, men of Athens; you perceive the annoyance which the thing occasions. Even if there were no disagreeable results—if it were not wholly impossible for us to have the same name—surely it is not just, while Bœotus has his share of the property by virtue of my father's compulsory acknowledgment, that I should be deprived of the name, which my father gave me voluntarily and without any compulsion. I cannot see the justice of this. To show you that my father not only made the entry,

[1] Because it was nominally directed against me, having my name and addition. Pabst. "Ich sahe mich genöthigt, gegen den von meinem Vater her auf mich vererbten Namen eine klage zuzulassen."
Schäfer correctly explains πατρόθεν, "nomine patris addito."

in the manner I have already proved, in the register of the clansmen, but also gave me this name when he kept the tenth day after my birth[1]—please to take this deposition:

[*The Deposition.*]

You hear, men of Athens, that I have always borne the name of Mantitheus; but the defendant was entered in the clan-register, when my father was compelled to enter him, under the name of Bœotus. I should be glad then to ask him in your presence—If my father had not died, what should you have done at the meeting of the township? Would you not have allowed yourself to be registered in the name of Bœotus? It would have been absurd to enforce the registry, and yet afterwards to prevent it. But my father, if you had allowed him, would have entered you in the township register by the same name as he had entered you in the clan-register. By earth and heaven! it is monstrous, that he should say Mantias was his father, and yet dare to disaffirm the acts done by him in his lifetime.

He ventured before the arbitrator to make a most impudent assertion—that my father kept the tenth day for him as he had kept it for me, and gave him the name of Mantitheus—and he produced some witnesses, with whom my father was never known to have any acquaintance. You must all be aware that, in the first place, no man would have kept the tenth day for a child, whom he did not believe to be rightfully his own; and in the next place, no one, after keeping the day and showing a parent's fondness for the child, could have brought himself afterwards to repudiate him. My father, though he might have quarrelled with the mother of these children, would not have hated them, if he believed them to be his own: it is far more usual for man and wife, when they are at variance, to become reconciled for their children's sake, than to hate their children for the injuries which they have done to one another. This however is not the only proof that his assertion, if he repeats it, will be false. For, before he pretended to be our relation, he

[1] This was the christening, as we should say; when the name was given to the infant, and the parents gave a feast and sacrifice to which they invited their friends and relations. Proof that such a feast was given was important on questions of pedigree and citizenship. See Becker's Charicles, Excursus to Scene I. page 220, Translation.

used to go to the training-school[1] of the Hippothoontian tribe, to dance in the chorus of boys. Is there one of you who believes, that his mother would have sent him to that tribe, when she had been cruelly used (as she says) by my father, and when she knew that he had kept the tenth day and afterwards denied it? I should think not a man would believe this. For you might just as well have gone to the training-school of the Acamantian tribe, and then the tribe would have been in conformity with the giving of the name.

To prove the truth of these statements, I will call as witnesses before you persons who went with him to the training-master and know all the circumstances.

[*Witnesses.*]

Clear as it thus is, that by his mother's oath and the simplicity of the person who tendered her the oath he has obtained a father and established a birth in the Acamantian tribe instead of the Hippothoontian, Bœotus the defendant is not content, but has even commenced two or three actions against me for money, in addition to the vexatious actions which he brought against me before. You must all know, what my father was as a man of business. I will say no more about it; but, if the mother of these men has sworn truly, the vexatious character of these proceedings is palpably demonstrated. For if my father was so extravagant, that, after having espoused my mother in lawful wedlock, he kept another woman, of whom you are the offspring, and maintained two establishments, how with such expensive habits could he have left money?

I am aware, men of Athens, that Bœotus the defendant will have no good argument to offer, but will resort to a

[1] Upon this passage Becker in his Charicles, Excursus to Scene I. page 228, Translation, remarks as follows:—

"The state never thought of erecting public institutions to be maintained at the general expense. In Demosthenes (1001) we read, it is true—εἰς Ἱπποθοωντίδα ἐφοίτα φύλην εἰς παῖδας χορεύσων. But even if we adopt the inference drawn from this passage by Böckh, Publ. Econ. of Athens, p. 121, that the tribes had partly to provide for the instruction of their youth in music and bodily exercises, by the appointment of teachers for this purpose, still such an association would always bear the character of a private undertaking. The whole passage however may with more probability be understood of Choregia: See Antiphon de Choreutâ."

charge which he is always making, that my father spited him at my instigation; and he claims to be entitled, as if he were the elder, to have the name of his paternal grandfather. As to this point, it is better that you should have a little information. I recollect, before he became a member of our family, I just saw him as I might see any one else, and thought him younger than myself, a good bit younger, to judge from appearance; however I lay no great stress upon that, for it would be silly to do so. But if the defendant Bœotus, when he thought proper to join the chorus of the Hippothoontian tribe, before he pretended to be my father's son, had been asked this question—"what name do you say you are entitled to?"—had he said "Mantitheus," I would reply—"you can't claim it on the plea that you are older than I am: for, as formerly you supposed you had no connexion even with my tribe, how could you have claimed relationship to my grandfather?" Besides, men of Athens, though none of you know the number of years—for I shall say that I am the elder, and he will say that he is—you all understand the reckoning of justice. What is that? That Bœotus and his brother should be considered my father's children from the time when he adopted them. He entered me in the township-register under the name of Mantitheus, before he introduced Bœotus to the clansmen. I therefore have a right to this name as the senior, not only in point of time, but in point of justice.

Again, suppose you were asked this question—"tell me, Bœotus, how comes it that you now belong to the Acamantian tribe and are a member of the Thorician township and the son of Mantias, and that you have a share of the property left by him?"—you could only reply, that Mantias in his lifetime acknowledged you as one of his children. If you were asked, what proof or evidence you had of this, you would say—"he introduced me to his clansmen." If you were asked, under what name he registered you, you would say "Bœotus;" for by that name you were introduced. It is monstrous then, when through the name of Bœotus you enjoy the civic franchise and a share of my father's inheritance, that you should choose to discard that name and take another. Suppose my father were to rise from the grave, and require you either to keep to the name in which he

adopted you, or to call yourself the son of another father, would not his demand be thought a reasonable one? I then make the same demand upon you—either to sign yourself as another man's son, or to keep the name which Mantias gave you.

Oh! but that name was given you by way of contumely and insult. Nothing of the kind. These men, when my father refused to acknowledge them, used repeatedly to say that the defendant's maternal kindred were quite as good as those of my father. Bœotus is the name of his mother's brother. And when my father was compelled to introduce them to the clansmen, I having been previously introduced as Mantitheus, he introduces the defendant under the name of Bœotus, and his brother under the name of Pamphilus. Show me, if you can, what Athenian ever gave the same name to two of his children. If you can, I will concede that my father gave you that name by way of indignity. However, if your nature was such that you could compel him to adopt you and yet not study to please him, you were not what a true son ought to be to his parents, and not being such, you deserved, I don't say to be treated with indignity, but to be put to death. Shocking indeed would it be, if the laws concerning parents should be binding on children whom the father himself considers to be his own, but of no force against those who push themselves into the family by means of a compulsory affiliation.

You most tiresome Bœotus! I would wish you, if possible, to renounce all your bad ways: but, if that is asking too much, do pray oblige me to this extent—cease to give yourself annoyance; cease to harass me with litigation; be content that you have gained a franchise, a property, a father. No one seeks to dispossess you, nor do I. If, as you pretend to be a brother, you do the acts of a brother, people will believe that you are my kinsman. But if you plot against me, go to law with me, envy me, slander me, it will be thought that you have intruded into a strange family and treat the members as if they were alien to you.[1] As to me

[1] Pabst perhaps more literally—"Du seyest in ein frendes Eigenthum gekommen, und behandelst es als eine Sache, die Dir nicht gehöre." uger—"On vous croira un intrus dans notre famille, un usurpateur de nos biens."

personally—however wrong my father might have been in refusing to acknowledge you—I certainly am innocent. It was not my business to know who were his sons; it was for him to show me whom I was to regard as brothers. So long therefore as he forbore to acknowledge you, I also held you to be no relation: ever since he acknowledged you, I have regarded you as he did. What is the proof of this? You have had your portion of the inheritance after my father's death; you participate in our religious worship, in our civil rights; no one excludes you from these. What would you have?

If he says he is cruelly treated, if he weeps and whines and accuses me, don't believe what he says; it is not right that you should, as the question is not about these matters now; but remember, that he may obtain justice quite as easily if he is called Bœotus. Why are you so obstinately contentious? Do desist: do not cherish these malignant feelings towards me! I have none such towards you: nay, I must tell you, even now I am speaking more on your behalf than my own, when I insist that we should not have the same name. For whoever hears it pronounced must at all events ask, which of us is meant, if there are two persons called "Mantitheus son of Mantias:" then, if the person means you, he will reply—"the one whom Mantias was compelled to adopt." How can you desire this?

Take and read, if you please, these two depositions, showing that my father gave to me the name of Mantitheus, and to the defendant that of Bœotus.

[*The Depositions.*]

I have now to show you, I believe, men of the jury, not only that you will satisfy your oaths if you pronounce the verdict which I ask, but that by the confession of the defendant himself it appears, that he ought to be called Bœotus and not Mantitheus. For, after I had commenced this action against him as Bœotus son of Mantias of Thoricus, at first he defended the action, and put in an affidavit for delay, as if he was Bœotus, but at last, when evasion became no longer possible, he suffered an award to be given against him for non-appearance, and just see, by the Gods, what he did!—he gets a rule to set aside the award for non-appearance,

entitling himself Bœotus. But, if he had really nothing to do with that name, he should in the first instance have allowed the suit to proceed to its termination against Bœotus, and not afterwards have himself obtained a rule in that name to set aside the award. When he has thus by his own adjudication declared his name to be Bœotus, what can he call upon you sworn jurors to decide?[1]

To prove the truth of these statements, please to take the rule to set aside the award, and this plaint.

[*The rule to set aside the award. The plaint.*]

If now the defendant can produce a law, which empowers children to choose their own names, you will do right to pronounce the verdict which he asks: but if the law, which you all know as well as myself, authorises parents not only to give the name in the first instance, but also to cancel and publicly revoke it, if they please; and if I have proved that my father, who had such authority by the law, gave to the defendant the name of Bœotus and to me that of Mantitheus; how is it competent for you to pronounce any other verdict than that which I ask? On questions, upon which there are no written laws, you are sworn to decide according to what is right and equitable; so that, even had there been no statute upon this point, you would have been bound to give your decision in my favour. For what Athenian ever gave the same name to two of his children? What Athenian, who is yet without children, ever will do so? Surely none. What then you consider in your judgment to be right for your own

[1] Perhaps Bœotus might have treated the summons to appear, and all the subsequent proceedings against him in that name, as a nullity; just as a person may do in our country, who is sued in a wrong surname, by which he has never been known. On the other hand, as Bœotus had formerly passed by that name, and as this was a suit instituted for the very purpose of compelling him to keep that name, it might have been dangerous to treat the whole process as a nullity, for fear of his being concluded by the judgment. The safest course might have been to appear and defend the action, under protest that he was sued by the wrong name; and, for aught we know, this was the course that Bœotus adopted. Schäfer pronounces the point to be a mere quibble. Such points however are frequently taken by lawyers; and a case like the present, for which perhaps the Attic law furnished no precedent, was likely enough to lead both to quibbles and to difficulties. See the following speech, page 1013 (orig.), and the argument to this. As to ἀντίληξις see Volume III. pages 393, 394, 398.

children, you are bound in conscience to decide in our case. It appears therefore, having regard to what is right and equitable, having regard to the statute laws, to your oaths, and to the defendant's own confession, that I, men of Athens, am asking you what is fair and reasonable, while the defendant asks what is not only unfair, but contrary to the practice of the country.

THE ORATION AGAINST BŒOTUS—II.

OR, THE ORATION FOR THE DOWRY.

THE ARGUMENT.

This is the action brought by the same plaintiff against the same defendant to establish his title to the marriage portion of his mother. The circumstances which led to it have already been explained in the argument to the preceding oration, and need not be here repeated. As Bœotus disputed the fact of the plaintiff's mother having received a portion on her marriage, Mantitheus calls his maternal relations to prove it; and in answer to the counter-claim set up by Bœotus for the portion of his mother Plangon, in support of which no direct testimony had been offered, he shows by the facts and probabilities of the case, that Plangon was portionless, and that the defendant's account of the matter is a fabrication. The decision of the arbitrator, which had not been appealed against, is insisted on by the plaintiff as affording a strong presumption in his favour. He enters, as in the previous case, into the topics of their family history, shows how ungratefully Bœotus had treated him, and appeals to the sympathies of the jury.

It is the most grievous thing in the world, men of the jury, when any one is by name called brother of persons whom in reality he regards as enemies, and when, on account of cruel injuries which they have heaped upon him, he is compelled to come into a court of justice; as is my case now. I have not only had the misfortune in the beginning, that Plangon, the mother of these men, deceived my father, and by manifest perjury forced him against his will to acknowledge them, and consequently I was deprived of two thirds of my patrimony: but, in addition to this, I have been driven by my opponents out of my paternal house, in which I was born and bred, and in which I received them after my father's death, though he in his lifetime would never admit them to it; and I am deprived of the marriage portion of my own mother, for which

I am now suing. I have myself given them satisfaction for all the demands which they made upon me, except a few cross-demands which they have vexatiously brought against me on account of this action, as will be perfectly clear to you; yet from them in a period of eleven years I have not been able to obtain anything that is reasonable, and at length I have recourse to you for protection. I beseech you then, men of the jury, to give me a favourable hearing while I address you to the best of my ability, and if it shall appear to you that I have been shamefully treated, to forgive my coming here to recover what is my own, the more especially as it is for a portion to give with my daughter; for I married when only eighteen at my father's request, and so it happens that I have a daughter already marriageable. It is just therefore on many accounts that you should redress the wrongs which have been done to me; and it is meet that you show resentment against these men; who (O earth and heaven!) when they might by doing justice have avoided coming into court, are not ashamed to remind you of anything which our father may have done amiss or any offence which they committed against him, and actually force me into litigation with them. To make you clearly understand, that it is not I, but my opponents, who are the cause of this proceeding, I will relate the facts of the case to you from the beginning in as short a compass as possible.

My mother, men of the jury, was the daughter of Polyaratus of Cholargus, and sister of Menexenus and Bathyllus and Periander. Her father having given her in marriage to Cleomedon, the son of Cleon, with a portion of a talent, she lived with him as his wife, and bore him three daughters and one son, named Cleon; her husband then died, and she left his family and received back the portion. Her brothers Menexenus and Bathyllus (Periander being yet a minor) gave her in marriage again with the talent for her portion, and she lived in wedlock with my father. They had issue myself and a younger brother, who died in infancy. I will first call witnesses, to prove to you that I am stating these facts correctly.

[*Witnesses.*]

My father, having thus espoused my mother, lived with her in his own house and treated her as his wife; me h

brought up, and showed a fatherly affection to me, such as you all show to your children. With Plangon, the mother of these men, he had intercourse of some kind or other; (it is not for me to say what:) his passion however was so far under restraint, that even after my mother's death he did not choose to receive her into his house as an inmate, nor could he be persuaded that these men were his children; and they lived all the rest of the time without being regarded as my father's sons, as most of you are aware; but after Bœotus had grown up and had leagued himself with a gang of pettifoggers, at the head of whom were Mnesicles and Menecles, the person who convicted Ninus, with whose assistance he went to law with my father, pretending that he was his son—many meetings took place about these affairs, and my father said, nothing could convince him that these men were his children; at length Plangon, men of the jury, (for the whole truth shall be told you,) conspiring with Menecles against my father, and deceiving him by an oath which among all mankind is held to be the most solemn and awful, agreed that upon receipt of thirty minas she would get her brothers to adopt these men, and that, if my father would challenge her before the arbitrator to swear that the children were his, she would decline the challenge; so, she said, while her children would not be deprived of their civic rights, they would no longer have it in their power to annoy my father, their mother having refused the oath. These terms being assented to—I needn't make a long story of it—he attended before the arbitrator, and Plangon, in violation of all her engagements, accepts the challenge, and swears in the Delphinium an oath directly contrary to her former oath, as most of you are aware; for the transaction was much talked about.

My father was thus by reason of his own challenge under the necessity of submitting to the award; at the same time he was indignant at what had occurred, and took it much to heart, and would not even then receive these persons into his house, although he was compelled to introduce them to his clansmen. And he entered this one in the register under the name of Bœotus, his brother under the name of Pamphilus. As I was about eighteen years of age, he persuaded me at once to marry the daughter of Euphemus, wishing to

see children born to me. I, men of the jury—considering that I was always bound to please my father, and that, when these men were vexing him by litigation and annoyance, it was my special duty to take the opposite course, and to console him by every means in my power—complied with his request, and married accordingly. He lived to see my daughter born, and a few years afterwards fell sick and died. Though in my father's lifetime, men of the jury, I did not choose to thwart him in anything, after his death I received these men into the house, and allowed them to share the whole property with me; not that I regarded them as brothers, (for it is almost universally known in what way they have become such,) but because I considered that, as my father had been taken in, it was necessary for me to obey your laws. They being thus received by me into the house, we proceeded to divide the inheritance; and, upon my demanding the return of my mother's marriage portion, these men advanced a counter-claim, and alleged that a portion of the like amount was repayable to their mother. Under the advice of persons who were present, we divided all the rest of the property, but reserved the house and the domestic slaves of my father, so that, whichever party established his title to the marriage portion, might receive its value out of the house, and, the slaves being common to both, should these men want to search for any of our father's effects, they might get information from the slaves, either by the torture or by any kind of investigation which they preferred. That these statements are correct, as well as the others which I have made, you shall see from the depositions which I put in.

[*The Depositions.*]

After this my brothers commenced actions against me for their demands, and I sued them for the marriage portion. And in the first instance we nominated[1] Solon of Erchia as

[1] Literally "caused him to be inserted"—either in the agreement of reference, (*in tabulis pacti*, as Reiske has it in his Index,) or, which is more probable, in the margin, or at the foot, of the record: for I rather apprehend that Solon was a public arbitrator, to whom the magistrate sent the case in the first instance, perhaps at the nomination of both parties. The arbitrator afterwards appointed was undoubtedly a public one; for the plaintiff intimates that an appeal lay from his decision. See Vol. III. Appendix X. page 398, &c.

arbitrator, and submitted our mutual claims to his decision. My brothers however, instead of attending the reference, shirked the hearing altogether, so that a great deal of time was wasted, and Solon died without having given judgment: they then commence their actions against me over again, and I commence a fresh action against the defendant, summoning him in the name of Bœotus and so entitling the plaint; for my father had given him that name. In their suit against me Bœotus appeared and fought the case, but, as he was unable to give any proof of his claim, the arbitrator pronounced in my favour; and Bœotus, knowing that he had made an unfounded demand, did not appeal to a jury, and has not now commenced any action against me for these matters, but for some others, thinking to defeat this judgment of mine by his new claims. In the suit which I then prosecuted against Bœotus for the marriage portion, he being in the country and not having attended before the arbitrator, judgment was given against him for non-appearance. Bœotus, men of the jury, neither appeared then to contest the cause, nor allowed that I had obtained the judgment of the arbitrator against him: for he said that his name was not Bœotus but Mantitheus, and thus, by disputing about a name, he in point of fact deprives me of my mother's marriage portion. As I scarcely knew how such a case was to be dealt with, I commenced this same action against him afresh in the name of Mantitheus, and now in the eleventh year I am come to you for protection.

To prove the truth of these statements, he shall read you the depositions which relate to them.

[*The depositions.*]

That my mother lived with my father in wedlock, that she brought him a marriage portion of a talent, and was affianced by her brothers, as the laws require—the manner also in which I received these persons into the house after my father's death, and that I obtained judgment in the actions which they brought against me—all this, men of the jury, has been proved to you and given in evidence. Now, if you please, take this law concerning the marriage portion.

[*The law.*]

Such being the enactments of the law, I imagine that Bœotus or Mantitheus, or whatever other name it pleases him to be called by, will have no true and just defence to offer, but, relying on his boldness and audacity, will try to shift the misfortunes of his own family on my shoulders, as he is accustomed to do in private society, and will say, that upon the confiscation of the property of Pamphilus, who was the father of Plangon, my father received the surplus monies out of the Council-chamber:[1] so he will endeavour to make out, that his own mother brought a fortune of more than a hundred minas, while my mother (as he pretends) was a portionless wife. He will tell you this story, men of the jury, without having put a single deposition in the box to prove it, and knowing there is not a syllable of truth in it, because he is perfectly aware, that no man was ever acquitted before you who confessed his guilt, but people have sometimes escaped punishment by lies and shuffling excuses.

In order that you may not be deceived by him, I think it is better to give you a little information upon the subject. Should he say, that my mother did not bring a marriage portion and their mother did, remember that this is a transparent falsehood. For, in the first place, Pamphilus, the father of their mother, died owing five talents to the public treasury, and, so far from there being any surplus for his children after his property had been scheduled and confiscated, even his debt has not been entirely discharged, but Pamphilus at this very moment stands in the register as indebted to the treasury. How then is it possible that my father received money from the estate of Pamphilus, which was not even sufficient to satisfy his debt to the commonwealth? In the next place, men of the jury, consider this—were it ever so true, that there was the surplus which these men pretend, my father would not have got it, but the sons of Pamphilus, namely, Bœotus and Hedylus and Euthydemus, persons who would go all lengths to get the property of others, as you all know, and of course would never have allowed my father to receive what belonged to them.

That the mother of my opponents did not bring a marriage portion, but that this is a pure invention of their own, I think

[1] As to the financial duties of the Council, see Böckh, Publ. Econ. of Athens. Translation, Vol. I. page 237.

you are sufficiently informed. That my mother did bring one, I can easily show. In the first place, she was the daughter of Polyaratus, who was honoured by the people of Athens and possessed a large estate. Secondly, it has been proved to you by witnesses, that her sister brought a portion of the like amount to her husband Eryximachus, the brother-in-law of Chabrias. In addition to this it is shown, that my mother was first given in marriage to Cleomedon, whose father Cleon, as we are told, commanded the troops of your ancestors, and captured a large number of Lacedæmonian prisoners in Pylus, and acquired a higher reputation than any of his countrymen; so it was hardly proper that his son should wed my mother portionless, nor is it likely that Menexenus and Bathyllus, who had a large fortune themselves, and who after Cleomedon's death received back the portion, deprived their sister of it; on the contrary, it is more likely, that they added to it when they gave her in marriage to my father, as they themselves and her other relations have testified to you. And besides this, just consider, if it were true that my mother was not an affianced wife and brought no marriage portion, while the mother of these men did bring one, what could possibly induce my father to deny that these were his sons, and to acknowledge me and bring me up? Perhaps, as these men pretend, because he dishonoured them to gratify me and my mother. But she died leaving me quite a little child, whereas their mother Plangon, who was a handsome woman, had intercourse with him both before and after that: so it was far more likely that on account of the living lady, of whom he was enamoured, he would dishonour the son of the deceased, than that for the sake of me and my deceased mother he should refuse to acknowledge the children of her who was living and having intercourse with him.

Bœotus however has reached such a pitch of audacity, as to say that my father gave a feast for him on the tenth day. And in support of this assertion he has put in the depositions only of Timocrates and Promachus, who are no way related to my father by blood, and were no friends of his. So manifestly false is their testimony, that, like witnesses to a summons, a pair of them only depose, that a man, who, as every one knows, was compelled by the legal proceedings of

Bœotus to adopt him against his will, gave a feast for him on the tenth day! Which of you will believe such a story? He can't say this, that my father acknowledged him when a little child, but, after he had grown up, refused to notice him on account of some quarrel with his mother. For surely it is much more usual for man and wife to make up their private differences for the sake of their children, than to hate their children on account of their own quarrels. If he attempts therefore to say this, don't listen to so impudent an assertion.

Should he talk about the actions which they brought, and which the arbitrator decided in my favour, and should he say that he was taken by me unprepared, remember first, that he had not a short time only to prepare himself, but many years; secondly, that he was the plaintiff, so that it was much more likely for me to be taken unprepared by him, than for him to be so taken by me. And further, all the persons who were before the arbitrator have stated to you in evidence, that Bœotus was himself present, when the arbitrator decided in my favour, and that he did not appeal to the court, but acquiesced in the award. It would be strange, I take it, when other men, who consider themselves wronged, carry the most trifling causes on appeal to you, that this man, who had sued me for a marriage portion to recover a talent, and had an award in the suit given against him (as he himself says) unjustly, should acquiesce in that award. Oh, but perhaps he is a quiet sort of person, not fond of litigation. I should have been glad indeed, men of the jury, if he had been such. But it is quite otherwise. While you are so liberal and humane, that you would not banish from the country even the sons of the thirty tyrants; Bœotus, conspiring against me with Menecles, who is the architect of all these plots, upon some dispute between us contrived from words to come to blows; then he cut his own head and summoned me on a charge of wounding before the Areopagus, with the intention of driving me into exile from Athens. And if Euthydicus the physician, whom these persons went to in the first instance and asked to cut the head of Bœotus, had not of his own accord disclosed the whole truth to the Council of Areopagus, this man would have taken such vengeance on me who never wronged him, as you would

not attempt to inflict even on the greatest offenders. That it may not be thought I am slandering him, read me the depositions.

[*The Depositions.*]

To get up so serious and formidable a charge against me was the act, not of a good-natured person, but of a conspirator and a ruffian. After this, instead of the name of Bœotus which my father gave him, as the witnesses have proved to you, upon my father's death he entered his name as Mantitheus in the register of our fellow-townsmen, and then, having for his address the same father and the same township as myself, he not only set aside the judgment in this action in which I am now suing him, but, when you had elected me to command the division of my tribe, he came himself to the court to pass his probation, and, when a judgment had been given against him in an ejectment suit, he gave out that the judgment was not against him but against me. To sum it up briefly—he annoyed me so much, that I was compelled to bring an action against him for the name, not with a view to get money from him, men of the jury, but in order that, if it appeared to you that I was cruelly used and grievously injured, the defendant might be enjoined to use the name of Bœotus, which my father gave him.

To show that these statements are equally true with the rest, please to take the depositions which relate to them.

[*The Depositions.*]

Here is another thing he has done. I was out on service, and had enlisted mercenaries with Aminias; I raised money from various quarters, and (among others) from Mytilene, where I received from your state-friend Apollonides and from other partisans of our commonwealth three hundred Phocaic staters, which I expended upon the troops, in order that some action might be performed to your and their advantage. For this Bœotus goes to law with me, alleging that I had recovered a debt due to my father from the Mytilenean state; his object being to serve Cammes, the tyrant of Mytilene, who is both my private enemy and also the enemy of Athens. That the reward which the Mytileneans voted to my father was received by him in person at the time, and that no debt

was owing to him in Mytilene, I will prove by producing a deposition of your friends.

[*The Deposition.*]

I could mention many other shameful acts of which Bœotus has been guilty, towards myself as well as towards some of you, men of the jury; but, as the water in my glass is scanty, I am compelled to pass them over. I think indeed that I have already given you abundant proof, that the same man who got up a prosecution against me involving the risk of exile, and sued me for wholly unfounded demands, is not likely to have attended before the arbitrator unprepared. If therefore he attempts to say anything upon this point, I expect that you will not listen to him.

Should he say however, that he requested me to refer all matters in difference to Conon son of Timotheus, and that I was not willing to refer them, be assured that he will be trying to impose on you. For my part, I was ready to refer those matters which had received no judicial determination either to Conon or to any other impartial arbitrator whom he chose; but questions which the arbitrator had decided in my favour after three attendances of Bœotus before him, and after hearing him in support of his claim, and upon which he acquiesced in the award, as has been proved to you in evidence, I thought could not with fairness be opened again. For what definitive settlement could we ever have come to, if I had set aside an award pronounced according to law, and referred the same causes of action to another arbitrator, especially when I knew so well, that, even if it is not equitable to insist on awards against other people, it is perfectly fair to deal in such a way with Bœotus. For let me ask one question—If any one were to indict him as an alien for assuming the rights of citizenship, alleging that my father denied upon his oath that this man was his son; in answer to the charge, what else could he rely upon but this, that, in consequence of their mother's oath and the arbitrator's decision, my father was compelled to abide by the award? It would be monstrous then, when this man has himself by virtue of an arbitrator's judgment become a citizen of Athens and shared the inheritance with me and obtained everything which is fair and reasonable, that he should receive any

countenance from a jury in seeking to reverse a judgment against his own claim, which I obtained against him after appearance and argument, and in which he has acquiesced; as if, when it is for this man's advantage, awards ought to be valid, but when it is not for this man's advantage, his judgment ought to have more effect than decisions pronounced according to your laws! He is such a designing person, that even this reference he did not propose with a view to terminate our disputes, but his object was that, as he had already carried on his knavish tricks for eleven years, so, by setting aside the judgment of nonsuit pronounced for me by the arbitrator, he might renew his vexatious proceedings against me and elude the present action. I can give you the strongest proof. He did not accept the challenge which I gave him according to the laws; and before that, when I had referred the cause about the name to Xenippus, whom he proposed as arbitrator, he gave him notice not to pronounce an award. That my last statements are true, you shall see from the deposition and the challenge.

[*The Deposition. The Challenge.*]

Having declined this challenge, his purpose being to ensnare me and to delay this action for as long a time as possible, he will (as I am informed) accuse not only me but my father also, saying that he did him injustice in many ways to gratify me. Now, men of the jury, my first request to you is this—As you yourselves would deem it scandalous to be defamed by your own children, on the same principle permit not Bœotus to speak evil of his father. It would be shameful indeed, when you yourselves abide, as honourable men should do, by your convention of amnesty with persons who under the oligarchy put to death without trial a large number of your countrymen, that you should allow this man, who made it up with my father in his lifetime and acquired advantages far beyond what he was entitled to, to rip open the quarrel and calumniate him. I entreat you, men of the jury, to do nothing of the kind. If possible, prevent his taking this course; but, if he abuse my father in spite of you, remember that he proves by his own testimony that he is not the son of Mantias. For true-born children, though they have differences with their fathers in their lifetime, praise them at all

events after their death: those who pass for sons, but are not the real issue of their supposed parents, easily quarrel with them while they are alive, and don't scruple to speak ill of them after they are dead. And besides this, consider how absurd it is, that Bœotus should abuse my father for having failed in his duty towards himself, when it is by my father's failings that he has become a citizen of Athens. And while I, who through their mother have been deprived of two-thirds of my property, have still too much respect for you to speak of her offensively; Bœotus is not ashamed in your presence to disparage the man whom he compelled to become his father: and so lost is he to all sense of propriety, that, although the laws forbid the calumniating even of other mens' fathers after their death, he will vilify the man whose son he pretends to be—he who should have shown indignation if any other person had defamed him.

I expect, men of the jury, that, when he is at a loss for other topics, he will endeavour to abuse me and try to raise a prejudice against me, by recounting how I was reared and educated and married in my father's house, while he enjoyed none of these advantages. I beg you to remember, that my mother died leaving me a child, so that the interest of her marriage portion was sufficient to rear and educate me; whereas Plangon, the mother of these men, brought them up at home and kept a multitude of female domestics and herself lived expensively, having my father (who was under the influence of his passion) to furnish the means, and she led him into all kinds of extravagance; so she must have spent far more of his property than I have. I then had much more reason to complain of them than they of me. Besides this, I in conjunction with my father borrowed two thousand drachms from Blepæus the banker for the purchase of some mines, and after my father's death I shared the mines with these men, but was myself compelled to pay the debt. I borrowed another thousand drachms for my father's funeral from Lysistratus of Thoricus, and I have paid them out of my own pocket. That these statements also are true, you will see from the depositions which I now put in.

[*The Depositions.*]

When in so many points they have clearly had the advantage over me, shall Bœotus now, by making a fuss and a clamour

about his grievances, deprive me also of my mother's marriage portion? I entreat you, men of the jury, by Jupiter and the Gods, not to be confounded by the clamour of my opponent. He is vehement in manner, vehement and audacious, and such a crafty knave, that, what he has no witnesses to prove, he will say is well known to you, men of the jury; a trick which all people resort to, who have no good argument to offer. Should he attempt such a trick, put him down; expose him: What any one of you does not know, don't let him fancy his neighbour knows: require Bœotus to give clear proof of everything he asserts, and don't let him shirk the truth by saying that you know things which he is unable in the least degree to substantiate. I myself, men of the jury, though all of you were aware of the manner in which my father was compelled to adopt these men, have sued them at law nevertheless, and have produced witnesses responsible for their testimony. Our risk however is not the same: for, should you be imposed upon by these men, I shall not be at liberty to sue again for the marriage-portion; whereas, if my opponents think that the arbitrator, to whom their actions were referred, was wrong in deciding for me, as at the time they might have appealed to a jury, so now again they will have the opportunity, if they please, of recovering their rights from me before your tribunal. And I, if you abandon me, (which Heaven forbid!) shall have no means of giving a marriage-portion to my daughter, whose father I actually am, though, if you could see her figure, you would think she was not my daughter but my sister; while my opponents, if you grant me redress, will pay nothing out of their own property, but will return me my own out of the house, which, though by our common agreement it was reserved to satisfy the marriage-portion, these men have for some time past been occupying alone. For it is not proper that, having a marriageable daughter, I should dwell with persons of this description, who not only live a profligate life themselves, but bring many other persons of the same character into the house; nor indeed do I consider it safe for me to abide under the same roof with them; for when they have thus openly conspired against me in getting up a charge before the Areopagus, what poisoning or other criminal device do you think they would scruple to employ?

Among other things—for this I just remember—they are so outrageously impudent, as to have put in a deposition of Crito, stating that he has purchased from me the third part of the house; the falsehood of which you will easily perceive. For, in the first place, Crito does not live so economically as to purchase another man's house, but with such reckless extravagance that he spends other men's property as well as his own. In the next place, he is not so much this man's witness as my adversary on the present occasion. For, as every one knows, those are witnesses, who are not concerned in the subject matter of the suit; those are adversaries, who have an interest in the questions upon which one goes to law with them; as is the case with Crito. Besides, men of the jury, out of all your numbers, out of the multitude of people living at Athens, not a single other witness has said that he was present at this transaction: Timocrates only, as if he were brought on the stage by a machine, deposes, that my father gave a feast for Bœotus on the tenth day, he (the witness) being a person of the same age as the defendant; Timocrates says that he knows absolutely everything which is for the advantage of these men; Timocrates now declares, that he alone was with Crito when he purchased the house from me. Which of you will believe this story? No one, I am sure; especially when the question in this cause is not about the house, whether Crito has purchased it or not, but about the marriage-portion which my mother brought to my father, and which therefore the laws enable me to recover. As I then have proved to you by a mass of testimony and circumstantial evidence, that my mother brought a marriage-portion of a talent, that I have not received it out of my father's estate, and that the house was reserved by us as security for its repayment, so also require the defendant to prove to you, either that I do not speak the truth, or that I am not entitled to recover the marriage-portion; for these are the questions upon which you have to give your verdict. If Bœotus has neither credible witnesses nor proofs of any other kind to offer on the matters upon which he is sued, and therefore introduces irrelevant topics for the purpose of deceit; if he blusters and talks of hardships and uses language foreign to the occasion; by Jupiter and the Gods! do not tolerate such behaviour; give me that redress which all the reasons I

have urged show me to be entitled to; and remember, that it is far more just that you should by your verdict give my mother's fortune to my daughter for her dowry, than that Plangon and her sons, adding another injury to those which they have already inflicted, should, contrary to every principle of justice, deprive me of the house, which was specially reserved as a security for the marriage portion.

THE ORATION AGAINST SPUDIAS.

THE ARGUMENT.

The plaintiff, whose name does not appear, had married one of the two daughters of Polyeuctus, an Athenian. By the marriage contract he was to receive with his wife a portion of forty minas. Thirty minas were given to him in ready money; the remaining ten were to be paid after the death of his father in law; and Leocrates, who had married the other sister and been adopted by Polyeuctus, agreed to be responsible for the payment. Polyeuctus afterwards quarrelled with Leocrates; an arrangement was with some difficulty effected between them, Leocrates retiring out of the family, and agreeing to a separation from his wife, who was transferred with her marriage portion to Spudias, the present defendant Polyeuctus then, to secure the ten minas to the plaintiff, mortgaged his house to him, and subsequently by his will directed that tablets of mortgage should be put up. (As to these see ante, p. 145, and also Appendix II. in this Volume.)

Upon the death of Polyeuctus without male issue, his estate descended to his two daughters as co-heiresses. The plaintiff however, in his own and in his wife's right, had certain demands upon the defendant, which by this action he sought to enforce. In the first place, he claimed the ten minas, the residue of his wife's portion, secured by the mortgage of the house. He claimed also half a mina, as the defendant's contribution to a funeral sacrifice, offered in honour of their father in law. Further, he required that two several sums of eighteen minas and two minas, one of which Spudias had borrowed of his mother in law, and the other he owed to Polyeuctus for the purchase of a slave, should be paid by him to the estate, or brought into the general account; together with certain articles of property which he had borrowed and never returned.

The plaintiff supports his claim by the production of various depositions, by the will of Polyeuctus, and by certain sealed papers which had been left by his mother in law. We collect in some measure from the plaintiff's speech, what the defendant's answer to the claim was. Spudias contended that Polyeuctus and his wife were acting under undue influence, and gave an unjust preference to the plaintiff

He denied the truth of the charges made against himself, as well as the plaintiff's title to the ten minas, and with respect to that part of the claim he alleged in particular, that he himself had only received thirty minas in money as his wife's portion, the rest being made up of dress and ornaments, to which the plaintiff had received an equivalent in value, and therefore, if the plaintiff's demand were allowed, he (Spudias) would not have his equal share of the inheritance. The plaintiff's arguments are partly directed to meet these points of defence, which (he contends) are false in fact and bad in law.

Spudias the defendant and I, men of the jury, are married to two sisters, the daughters of Polyeuctus. He having died without male issue, I am compelled to go to law with the defendant about the property which has been left. And if, men of the jury, I had not been perfectly willing and made every endeavour to come to a settlement and refer our differences to friends, I should have blamed myself for not submitting to a trifling loss rather than engaging in a troublesome lawsuit. But, the more kindness and forbearance I showed in discussing the matter with Spudias, the more contemptuously he treated me. And now, I apprehend, I am not in the same position that he is with regard to the present trial. The defendant takes it easily, being accustomed to come often before you here: I am afraid that, through my inexperience, I may not be able even to explain the case to you. However, men of the jury, I pray your attention.

Polyeuctus was a member of the Thriasian township; perhaps some of you may have heard of him. This Polyeuctus, as he had no male issue, adopts Leocrates, the brother of his wife. Having two daughters by the sister of Leocrates, he gives the elder to me with a portion of forty minas, and the younger to Leocrates. So things stood, when a quarrel took place between Polyeuctus and Leocrates, the nature of which there is no need to mention, and Polyeuctus takes away his daughter and gives her to Spudias the defendant. Leocrates, in high dudgeon, commenced actions against Polyeuctus and Spudias, and they were called upon to meet all the claims that he advanced against them. At length however they came to a settlement, upon the terms that Leocrates should receive back all that he had brought into the estate, that he should be reconciled to Polyeuctus, and that they should give mutual releases from all demands. Why, men of the jury, have I stated these facts to you? Because I did not receive

the whole of my wife's portion, but a thousand drachms were left unpaid, with the assurance that I should have them on the death of Polyeuctus; and, so long as Leocrates was the heir of Polyeuctus, he was responsible to me for the payment of the debt; but, when Leocrates had quitted the family, and Polyeuctus was dangerously ill, then, men of the jury, I got a mortgage for ten minas upon this house, of which Spudias prevents me receiving the rents.

I will first produce the witnesses who were present, when Polyeuctus contracted to give me his daughter with a portion of forty minas: then I will prove that I received it less a thousand drachms; and further, that Polyeuctus always admitted that he owed me that sum, and introduced Leocrates to me as a party jointly liable,[1] and that at the last he directed by his will, that tablets should be put on the house for a thousand drachms owing to me in respect of my wife's portion. Call me the witnesses.

[*The Witnesses.*]

This, men of the jury, is one of the claims which I make against Spudias. And in support of it what stronger or more convincing argument could I have brought before you than the law, which expressly declares, that there shall be no right of action for property which people have mortgaged, neither for them nor for their heirs? Nevertheless Spudias is come here to contest this point of law. My next claim, men of the jury, is the following. Aristogenes has deposed, that Polyeuctus on his death-bed claimed two minas as owing to him from Spudias, with interest; (it was the price of a domestic servant, whom the defendant had purchased of Polyeuctus, but neither paid him the money nor has brought it now into the general account:[2]) and there are also eighteen hundred drachms, as to which I have not the least idea what he can have to say. He had borrowed the money from the wife of Polyeuctus, and there are some papers which she left

[1] Or, as guarantee; or the party to whom I was to look for payment after his death. Pabst—"als Mitschuldner mir vorgestellt." Schäfer explains συστῆσαι in like manner, referring to Meier, Attic Process, page 503.

[2] Reiske in his Index—"in censum infert—in recensione reliquarum rerum commemorat." Pabst—"ohne dass er auch jetzt zu der Erbschaftsmasse die Summe eingeworfen hätte."

on her death-bed, and the brothers of the lady are witnesses; they were present while she wrote them, and questioned her as to every particular, that there might be no unpleasantness between us. It is shameful and cruel, men of the jury, when for everything which I either bought of Polyeuctus or had from his wife I have paid the price with interest, and when now I bring everything which I owed into the general account, that the defendant should regard neither your laws nor the will of Polyeuctus nor the papers which have been left nor the witnesses who know the facts, but should have come in the face of all this to contest my demand.

Please to take first the statute, which declares that there shall be no right of action for mortgaged property against those who hold the mortgage, then the papers which were left, and the deposition of Aristogenes. Read.

[*The Law. The Papers. The Deposition.*]

I will now, men of the jury, explain to you the particulars of my other claims. They received from the wife of Polyeuctus a plate, which they pawned with some jewellery, and this they have not redeemed and brought into the account, as Demophilus, to whom it was pawned, will testify. And a parasol[1] which they have taken—this they don't account for; and there are some more articles of the same kind. And lastly, though my wife advanced a mina in silver, to defray the expenses of a funeral offering[2] for her father, even of this he refuses to contribute his share: but this is the way he proceeds—what is justly his own he has either had beforehand, or will receive in the partition of the property; his liabilities he openly refuses to discharge.[3]

[1] So Harpocration interprets *σκηνὴν* in this passage. Pabst and Auger give it the ordinary meaning of a tent. Reiske thinks it might signify the curtains and hangings of a four-post bed.

[2] Literally "the Nemesea," which Reiske interprets as follows—"videntur inferiæ fuisse Nemesi factæ, ne manes defuncti succenserent superstitibus, si forte per imprudentiam aliquid justorum omisissent aut a testamenti sententiâ descissent." He himself would prefer to read *νεκύσια*, which were offerings to the dead on the anniversary of the day of death.

[3] The antithetical form of the sentence, *ἃ μὲν—τῶν δὲ—τὰ δὲ*—cannot well be kept up in English.

It is to be understood thus: *ἃ μὲν ἔχει προλαβών*, refers to gifts or payments which Spudias had had during the life of his father in law, for

That I may not omit to prove these last matters, please to take the depositions concerning all of them.

[*The Depositions.*]

Perhaps, men of the jury, Spudias will not contest these facts; indeed he will not be able, clever as he is: but he will accuse Polyeuctus and his wife, and say that they did all these things to favour me and under my influence, and that in fact he has been seriously injured in other ways, and has brought an action against me: for this he attempted to say before the arbitrator. I beg to say, men of the jury, that, in the first place, I don't consider a defence of this kind to be legitimate: it is not proper, when a case is clearly made out against a party, that he should shift the ground and resort to recrimination and calumny: for his cross-demands, if he has any cause of complaint, he will of course recover satisfaction; for the claims made on him he is to give satisfaction. How could I now defend myself against the slanders of my opponents, and pass by the questions upon which you have to give your verdict? In the next place, I wonder, if he had a true and just demand, how it happened that, when our friends wished to reconcile us and many discussions took place on the subject, he could not agree to abide by their decision. Who could so easily have exposed what was frivolous either in his claims or in mine, as persons who were present at all these transactions, who knew the facts as well as ourselves, and who were impartial judges and friends of both? But it evidently did not suit the defendant's interest, to come to a settlement in this way, and be exposed and convicted by our friends. For don't imagine, men of the jury, that the persons who knew all these facts, and who now at the risk of their responsibility give testimony in my favour, had formed any different opinion then, when they were not even on their oaths.[1]

example, his wife's marriage portion: τῶν δὲ τὰ μέρη κομίζεται, the share which he claimed as husband of one of the next of kin in her father's estate: τὰ δὲ οὐκ ἀποδίδωσιν, the claims made on him by the plaintiff; viz. the ten minas and a half due to himself, and the twenty minas and borrowed articles which he had to pay or account for to the estate.

[1] Schäfer condemns the reading of οὐδ' ὀμόσαντας, on the ground that arbitrators were always sworn, and himself adopts the reading

Supposing I had none of these points to help my case, even then it is easy to see which of us gives the true account of the matter. With respect to the house, if he says that it was under my influence that Polyeuctus ordered the hypothecation for the thousand drachms—well, Spudias! but surely I did not influence the witnesses to give false testimony for me—those witnesses who were present when he promised me his daughter, who knew that I did not receive the whole of the marriage-portion, who heard him acknowledge himself in my debt and also introduce the party who was to pay, and who lastly were present at the making of the will. With all these persons the question was no longer whether they would favour me, but whether they would risk a charge of false testimony by deposing to what never occurred.

But let us have done with that matter. What will you say to this, Spudias? Mind that you give a satisfactory explanation to the jury. If he does not, demand it of him, one and all of you. I say that, when Polyeuctus gave this testamentary direction, the defendant's wife was present, and of course she reported to him the will of her father, especially if he did not take an equal share, but it was to his disadvantage in all respects. And the defendant himself was invited to attend, so that he cannot say it was a clandestine transaction and contrived by us behind their backs. When he was asked to come, he said he was engaged himself, but it would be sufficient for his wife to be there. What further have I to mention? Aristogenes gave him a full report of what had been done, and even then he made no remark about it, but, though Polyeuctus lived after that more than five days, he neither expressed dissatisfaction when he went to the house, nor made any remonstrance, nor did his wife, who was present

ὁμολογήσαντας, translating "aliud quid consensu pronuntiâsse." But Schäfer is in error in supposing that there was an award pronounced. Assuming that there was a reference to private arbitration, which is not quite certain, (for these meetings of friends, *βουλομένων διαλύειν*, may have been without any formal reference,) at all events the submission was revoked before any award was given, as is clear from the words *οὐχ οἷός τ' ἦν ἐμμένειν οἷς ἐκεῖνοι γνοῖεν*. There was indeed a hearing before a public arbitrator, *πρὸς τῷ διαιτητῇ*, (1031,) but that is another affair.

In my opinion *οὐδ' ὀμόσαντας* is the true reading; otherwise there is no antithesis to the *νυνὶ μὲν ὑποκινδύνους*, &c.

at all of it from the beginning. It appears then now, this was not an act done by Polyeuctus under my influence to favour me; it was the act rather of you yourselves. Bear these facts clearly in your minds, men of the jury, and, if he should attempt to give a false colour to the affair, oppose them to his calumnies. First however, that you may be perfectly convinced of the accuracy of my statements, hear the witnesses. Read.

[*The Witnesses.*]

You see, men of the jury, with respect to the thousand drachms—that Polyeuctus mortgaged the house to me *bonâ fide*, and for an existing debt to that amount, I have the testimony, not only of the other witnesses whose depositions are put in, but of the defendant himself and his wife, by their acquiescing at the time, and making no objection either to Polyeuctus, who survived so many days, or to Aristogenes when they first heard of the will. If the house however was honestly mortgaged, it is impossible that, having regard to the law, you can acquit Spudias as to this part of the case. Now look at the question of the twenty minas, which he does not bring into the account. Here again the defendant himself will be my strongest witness, not by words indeed, as now, when he is making out a case for his defence [1] —(words are a poor criterion of the truth)—but by an unmistakeable act. By doing what, men of the jury? Pray give your attention to this, so that, if he should dare to utter any

[1] I am not satisfied with any of the interpretations hitherto given of this obscure passage, and I offer my own with diffidence. The orator seems to have sacrificed clearness to brevity. The full expression of his meaning (as I take it) should have been—ὥσπερ νῦν μάρτυς ἔστα. ἑαυτῷ, and the meaning is as follows – Spudias has given evidence for me by his acts, not by his words merely. There is not much in words; a man may say one thing at one time, and another at another: As Spudias may formerly have made statements in my favour, so now he may make statements to support his own case, and probably will do so, for want of other witnesses. But acts are evidence which he cannot alter or get rid of.

Such is the best sense that I can make of it. Pabst translates it thus:

"Hier nämlich wird er mir selbst wieder den vollgültigsten Zeugen abgeben, zwar nicht durch förmliche Aussage, indem er ja mein Gegner bei diesem Rechtstreit ist, ihr Richter, (was aber hiergegen nicht als Einwurf gelten kann,) sondern durch die offenkundige That."

calumnies about the mother of our wives or about the documents, your acquaintance with the facts may prevent your being deceived by his representations. These papers were left by the wife of Polyeuctus, as I said just now. The seals being acknowledged by the defendant's wife as well as by mine, we, being both present, opened them and took copies, then sealed them again and deposited them with Aristogenes. Now mark this, men of the jury—mark this, I entreat you. There was mention in the papers of the two minas, the price of the servant; and it was not only Polyeuctus who had claimed it on his death-bed. There was mention also of the eighteen hundred drachms. When he read that entry, if it had nothing to do with him and was untrue, why, I ask, did he not immediately complain? Why did he join in sealing up again papers which were false and of no value? Surely no one would do this, who did not assent to all the statements. But surely, men of the jury, it is monstrous, if these persons are allowed to dispute now what they have themselves assented to, and you are not influenced by this consideration, that it is the custom with all of us, when demands are made which are unjust and untrue, not to be silent, but to dispute them on the instant, and those who fail to do so, if they contest them afterwards, are thought to be rogues and shufflers. Spudias knows this as well as I do; nay, he must know it a great deal better, because he comes much more frequently to your tribunal; and yet he is not ashamed to make assertions inconsistent with all his acts. It often happens that you, on discovering a single piece of fraud, treat it as evidence against the whole case: but the defendant is convicted by himself of falsehood in every point.

Please to take the depositions, showing that the seals of the papers were acknowledged at the time by this man's wife, and that they are now deposited sealed by Spudias.

[*The Depositions.*]

As these facts have been so fully established, there is no necessity, I should think, to add another word: for, when I am able to produce both laws and witnesses in support of all my statements, and also an admission in my favour made by my adversary himself, what further need can there be for a long speech? However, if Spudias complains about the

marriage portion, and says that he should be losing his fair share if I got the thousand drachms, he will tell you an untruth: for, while he disputes my right to that money, he has received more, and not less, than I have, as you will see in a minute. Supposing him even to be correct in his assertions, surely, if the laws are good for anything, I ought not to lose the marriage portion which was promised me; nor can it be just, if Polyeuctus chose to give a larger fortune to one daughter and a smaller to the other, that his purpose should now be thwarted: for it was in your own power Spudias, not to marry his daughter, unless he gave the thousand drachms to you as well as me. However, you received as much as I did with your wife, as I will show.

Please first to take the deposition, showing the terms of the marriage contract.

[*The Deposition.*]

How has he received as much as I have, (it may be asked,) if in his case the valuation of the jewellery and apparel (taken at a thousand drachms) was included in the forty minas,[1] while I get the ten minas as a distinct and additional payment? This I am now going to explain. Spudias, men of the jury, received his wife from Leocrates with the jewellery and apparel, which Polyeuctus valued to Leocrates at something more than a thousand drachms. What I have had sent to me by Polyeuctus independently of the marriage portion, if you will only set it down against the articles given to Spudias, you will find to be pretty nearly equal to them, independently of those valued at the thousand drachms.[2]

[1] Pabst construes this sentence differently—

"Wenn ihm das Goldgeschmeide zu vierzig Minen, und die Kleider zu tausend Drachmen angerechnet worden sind."

[2] What the plaintiff means, as I understand it, is this:

"Spudias received with his wife thirty minas in money, and also jewellery and apparel which her former husband Leocrates had given to her, and for which Polyeuctus paid to Leocrates their estimated value, a little more than ten minas. In addition to this he received from his father in law certain marriage presents, (τὰ τούτῳ δοθέντα,) equal in value to what I received independently of the dowry. The result is that, when I receive the ten minas, which were left unpaid, I shall have no more than Spudias, and indeed less, as the ornaments given up by Leocrates cost Polyeuctus somewhat more than the ten minas."

This is not expressed by the orator with his usual clearness, and

It was but fair therefore that the valuation of these articles should be included in the forty minas, as he had paid Leocrates for them, and they exceeded what were given to me.

Please to take this schedule first, and read to them what each of us has in his possession: after that, read the depositions of the arbitrators, that the jury may see, that Spudias has received property to a much more considerable amount, and that Leocrates made a complaint upon the subject, and the arbitrators decided it accordingly. Read.

[*The Schedule. The Depositions.*]

Is it not manifest, that the defendant has received forty minas for his wife's portion long ago, whilst I have received thirty minas, as he has, but, so far from having afterwards got the thousand drachms, I am now contesting the question whether I have not received them wrongfully? It was for this reason, men of the jury, that Spudias would not leave the settlement of our disputes to the decision of friends, because then the injustice of his case must have been detected; for, as they were present at all these transactions and knew everything about them, they would not have allowed him to assert what he pleased; whereas before you he imagines he can prevail over my truthful statements by falsehood. I have laid my whole case before you as clearly as I was able to do myself: the defendant dared not come before those acquainted with the facts, thinking that it would have been out of his power to give them a false account. Don't you permit him any more than they would have done, to give utterance to lies and calumnies; but keep in mind what you have heard, men of the jury: for you know the whole history of the case, unless I have omitted something from being compelled to speak with a short allowance in the water-glass.

Wolf therefore not unnaturally suspects that there is some trick in the argument.

The schedule afterwards put in contained probably an enumeration of the articles of dress, &c. which each party's wife had received.

THE ORATION AGAINST PHÆNIPPUS.

THE ARGUMENT.

THIS was a proceeding arising out of that remarkable regulation of the Athenian law, called the Exchange of estates; whereby a person burthened with one of the public offices, as the trierarchy, or included in one of the higher classes of tax-payers, or in the select body of Three-hundred, was enabled to obtain relief, by requiring some richer person than himself either to take the public burden in his stead or to exchange properties with him. A summary of the law upon the subject has been given in the first Volume of this Translation, Appendices IV and V. The reader will find it more fully discussed in Böckh's Public Economy of Athens, and may compare what I have said upon one branch of the subject in the note to page 116 of this Volume.

The complainant in the present case, whose name does not appear, had for some time been included in the select body of Three-hundred, who were not only subject to the highest rate of assessment to the property-tax, but were called upon, in case of necessity, to pay the whole tax in advance. Having lost three talents by the forfeiture of a mine, and sustained other misfortunes in his business, it became necessary for him to seek the relief which the law afforded. Accordingly, at the court held by the Generals in the month of Metagitnion, he applied for relief, and named Phænippus as a person who ought to be substituted in his stead. Notice of the intended appeal had of course been given to Phænippus; and he attended at the court, and disputed his liability. To determine whether he was liable or not, (which question, if not amicably settled, must in due course be brought before a jury,) an account had to be taken of the estates of both parties, of what they respectively consisted, and their comparative values. Each was obliged to give to the other a schedule or inventory of all that he possessed; and each had a right to inspect and examine the lands, goods, and chattels of his opponent, so that no fraud, by way of removal or otherwise, might be practised in the interval before the final hearing of the case The complainant availed himself of this right without delay, and proceeded to a farm which Phænippus possessed in the district of Cytherus. It was of considerable extent, being more than five miles in circumference. He went all round it with witnesses, and bade them take notice, that there were no tablets of mortgage put up on the land. At the mansion or farm-house he put his seals on the doors, got the necessary information about the farming stock; finding that there was a

large quantity of timber on the land, he gave special notice that none should be carried away, left some servants of his own to keep watch on the premises, and desired Phænippus to make a similar examination of his (the complainant's) property.

On the eleventh day of the following month (Boedromion) the parties were sworn to furnish true accounts. They were bound by law to deliver their inventories in three days after. Phænippus however made some overture for an accommodation, and obtained an enlargement of the time. It was arranged that the parties should meet on the twenty-third of Boedromion, to see if they could come to a settlement, and that Phænippus should deliver his inventory on the twenty-fifth This arrangement was not carried out; for Phænippus failed to attend the meeting, or to deliver his inventory on the day appointed; consequently there was no alternative but to prepare for trial. A day was appointed for it, and Phænippus gave in a schedule of his effects three days before.

At the trial the important thing to be shown on behalf of the complainant was, that his adversary's estate so far exceeded his own in value, as to give him an equitable right to the interference of the court. If he could not establish this satisfactorily, the complaint would be dismissed: if he did establish it, then, as we know, the respondent would have the option, either to take the petitioner's place among the Three-hundred, or to make an exchange of properties with him. If he chose the former, it was a simple affair; if the latter, a variety of questions might arise as to the best mode of carrying out the exchange, and with respect to the accounts which each party had given in, whether they were full and correct, or whether there had been any mistake or misrepresentation or concealment. In our dearth of information upon these points, we are unable to ascertain how far the same court which first decreed relief was competent to decide upon these ulterior questions; or whether it was the practice to grant adjournments, or impanel another jury, for the purpose of any further direction. It is not improbable however, that the disclosure of facts which took place upon the first inquiry, or the expression of an opinion thereupon by the jury, would frequently induce the parties to come to a settlement out of court.

In the present case the speaker labours to show that the property of Phænippus was considerably greater than his own, and that he had resorted to illegal and unfair devices to conceal its amount. He had delayed the trial, and kept back his inventory until the last three days, evidently for a dishonest purpose. In the meantime he had broken the seals which had been placed on the doors of the farmhouse; he had carried away corn, wine, timber, and other things; he had set up notices of mortgage on the land, which were not there when the complainant first examined it, and he had made out a fraudulent inventory, pretending that his estate was subject to debts, all of which were purely fictitious.

The complainant urges his claim to relief on account of the misfortunes which he had incurred in his mining speculations While the mining interest had been greatly depressed, the agriculturist class, to which

Phænippus belonged, had been enjoying a high degree of prosperity It was but fair that the burden should be transferred from a distressed party to one who was better able to bear it. Phænippus had inherited two estates, each of which had formerly done duty to the commonwealth; since he had become possessed of them, though he had himself lived in luxury, he had contrived to shirk the taxes and official services. Public policy required, that he should be compelled to contribute, in respect of his property, to the public charges; and he should not be allowed to escape by means of such tricks as he had endeavoured to practise on the complainant.

Phænippus appears to have brought counter-charges against his opponent, and (among other things) objected that he had omitted from his inventory the mines, which should have been offered with the rest of his effects for the exchange. The complainant answers, that this was in accordance with the Athenian law, as mines, being the property of the state, were not subject to property tax, and not transferable under the exchange. In proof of this he cites the statute itself (upon which the reader will find Böckh's and Becker's observations in a note). As there was an appearance of unfairness in this regulation, and the complainant feared perhaps that a prejudice might be raised against him in the minds of the jury, he seeks to remove this by making an equitable proposal. "If"—says he—"Phænippus will give me his land free from the pretended incumbrances, and will bring back the things which he has fraudulently removed from the farm, I will include my mine-property in the exchange." The very making of this offer seems to show the uncertainty of the Athenian law; or perhaps it implies a doubt in the speaker's mind as to his ability to prove the charges which he had made against Phænippus; and it may have been a bold stroke to drive him to a compromise.

The speech, though valuable for the light which it throws upon a very obscure subject, is feeble in its composition, and the best critics have refused to recognise it as one of the genuine works of Demosthenes.

Blessings, men of the jury, upon all of you, and in particular upon Solon, who established the law respecting the exchange of estates. For if he had not clearly defined to us what is the first thing to be done by persons who tender the exchange, what the second, and so on, I cannot tell how far the audacity of the respondent Phænippus would have gone, when even now, notwithstanding that everything is prescribed to us by the law, he has disregarded its just enactments, and instead of giving me the inventory of his property according to law within three days after he was sworn, or, if he did not like that, giving it at least on the twenty-fifth day of the month Boedromion, which he got me to appoint and on which he promised to deliver the inventory—instead

of doing either the one or the other, he treated both me and the law with contempt, and delivered it in the second month, only two or three days before the cause was brought into court, and kept out of the way all the remainder of the time: and again, instead of leaving the seals which I had put upon the buildings undisturbed, he went into the country and opened them, and carried away the barley and other things, as if the law had given him liberty to do whatever he pleases, not that which is right and just.

For my own part, men of the jury, I should have been only too glad to see myself in prosperous circumstances, as I used to be, and remaining in the body of Three-hundred: but, since I have shared the general misfortunes of all those engaged in the works, and have also incurred special losses of a ruinous nature in my own business, and now on this last occasion I have to pay to the state three talents, a talent for every share—(for I was a partner, I am sorry to say, in the confiscated mine)[1]—I am under the necessity of endeavouring to substitute in my place a man who is richer than myself, and indeed always was richer, and who has never served any public office or contributed anything to the property tax. I therefore entreat of you all, men of the jury, that, if I prove the respondent Phænippus to have transgressed the regulations of the law and to be a richer person than myself, you will afford me relief, and place him in my stead in the list of the Three-hundred: for it is on this account that the laws every year allow the tendering of the exchange, because it is a rare thing that any of our citizens can permanently maintain their prosperity. I will tell you all that has taken place concerning the exchange from the beginning.

On the second day of the month Metagitnion, men of the jury, the Generals held a court for proposing the exchanges to the Three-hundred. At this court I cited the respondent Phænippus according to law. Having cited him, I took with me some of my friends and relations and proceeded to Cytherus, to his farm on the borders.[2] And first

[1] The mine having been forfeited to the state, probably for non-payment of rent, the speaker had to pay this money to obtain a re-grant of it.

See Böckh, on the Silver Mines of Laurium, pages 467, 479 (translation).

[2] See Böckh, I. 86. Trans.

I led them round the farm, a circuit of more than forty furlongs, and I pointed out to them in the presence of Phænippus, and requested them to take notice, that there was no tablet of mortgage on the boundary; and I required Phænippus, if he said there was any, to declare it at once and show it to us; for I was anxious that no debt should rise up on the estate at a later period. Then I sealed the buildings, and required Phænippus to come and inspect my property. After that I asked him, where his threshed corn was; for, by the Gods and Goddesses,[1] men of the jury there were two barns on the farm, each of them nearly a hundred feet in circumference. He replied, that part of the corn was sold, part laid up in the granary. At length—that I may not be tedious—I put some persons inside to watch, and, by Jupiter, I gave notice to the ass-drivers, and stopped them carrying timber off the land; (for, among other sources of wealth which Phænippus enjoys, this also brings him a large revenue, men of the jury; he has six asses carrying wood all the year round, and he receives more than twelve drachms a day;) I told the ass-drivers, as I say, not to touch the wood, and then, after giving notice to Phænippus to attend the sacrifice[2] according to law, I went back to the city.

I will first produce to you the evidence in support of these statements, and then you shall hear the other facts of the case fully and accurately. You will find, men of the jury, that Phænippus began from the very first day to set justice at defiance. I sealed up the buildings, as the law had allowed me; he unsealed them. And he acknowledges having removed the seal, but does not acknowledge that he opened the door, as if he removed the seals for any other purpose but to open the doors.

Again, I gave notice that no wood should be carried away; he carried it away every day except that on which I gave the notice. There was no debt charged upon the

[1] "Formula jurisjurandi non magis, opinor, Demosthenica, quam quæ legitur, p. 1044, πρὸς τῶν θεῶν καὶ δαιμόνων. Schäfer.
The prayer in the exordium called forth a similar remark. And other critics, besides Schäfer, have doubted the genuineness of this oration.

[2] For the purpose of taking the oath.

land; he now puts down a number of debts. In short, he does just what he pleases, not what the laws require Read the depositions, first those concerning the mine, and then the others.

[*The Depositions.*]

The wrongs which Phænippus began to do me on the very first day after the citation you have heard, men of the jury, both from me and from the witnesses. His subsequent conduct goes beyond this; it is an offence not only against me, but against the laws, which you are all bound to vindicate.

After he had sworn on the eleventh of the month Boedromion to give a true and just inventory of his effects, the law expressly declaring that the inventory shall be given within three days after the day of the oath, he came up to me at the court, with Polyeuctus of Crioa and some other persons, and requested me, first, to meet him and see if we could settle the matter, assuring me that he would do everything that was right; secondly, to give him time for making out the inventory, but he only asked a few days, for he was aware of my position. As I considered it became a respectable citizen, who eschewed quarrels and offences, not to rush headlong into a court of law, I gave my consent, (for I need not dwell upon the details,) that the meeting for a settlement should be on the twenty-third of the month Boedromion, and the inventory of effects should be given on the twenty-fifth.

Notwithstanding that he had obtained both his requests from me, Phænippus did not attend on either of those days; and now he appears before you as the violator not of one law only, but of two laws: first, that which requires a man to deliver the inventory of his effects within three days after he has been sworn, secondly, that which declares that mutual covenants, entered into in the presence of witnesses, shall be valid. Why, there is not one of you, men of the jury, who does not know, that the day prescribed by law and the day agreed to by the parties are equally necessary to be observed. It frequently happens that, although the thirtieth day is prescribed by statute, we appoint another for ourselves by consent, and in every office the magistrates put off trials and other proceedings for the parties, upon their mutually con-

senting.[1] Should any party think proper to repudiate such an arrangement, you would regard him as a most odious pettifogger. Yet Phænippus, as if the law commanded people to perform nothing that they have agreed to, from the day when he promised to meet for a settlement and to give me his inventory and receive mine, never made his appearance. I, when I saw that he was paying no regard either to me or to the laws, gave in my inventory at the office of the Generals: Phænippus, as I said a little while ago, gave me a paper just before the trial; his sole object being, that he might appear to have delivered his inventory, without my being able to make any use of its contents. You ought, men of the jury, not to give an undue advantage to those persons, who deem their own brutality to be stronger than the laws; if you do, you'll multiply the number of people who mock at all legal ordinances: you ought rather to assist those who regard the voice of the laws as yours, and who believe that this your voice, which is heard in the court of justice,[2] is raised to protect the injured, not the doers of injury.

Read the depositions in proof of what I have just stated, and the laws.

[*The Depositions. The Laws.*]

I, men of the jury, after having suffered such wrong at the hands of Phænippus, made out this schedule and delivered it to the Generals. Read.

[*The Schedule.*]

By the Gods and demons, men of the jury, how else is one to prove that Phænippus is amenable to the laws which have been read, than in the manner in which I now prove it? Phænippus however has made a counter-charge against me, that I do not give a just description of my property: (so readily will persons like him misstate the facts to you:) and

[1] In some cases the law expressly provided that the trial should take place on the thirtieth day after action brought. In other cases it was left to the magistrates to appoint days for appearance, trial, &c. In every case however the time might be varied by consent.

See Schömann, Att. Proc. 693; and Volume III. of this work, page 387.

[2] τὴν εἰς τὸ δικαστήριον. These words are rendered by Pabst—"die an der Stätte des Gerichts vernommen wird." Schäfer thinks the passage corrupt.

he complains of the oath which I swore before making out the inventory, saying that I undertook to set forth all the rest of my property besides that in the works; as if to swear according to the laws were a ground of complaint. You know, men of the jury, for you enacted, the law which expressly so declares, that the parties to an exchange, when they take the oath before making out their inventories, shall swear in manner following—"I give a true and correct inventory of all my property, except that in the silver-works, which the laws have made exempt from duty." But I would rather you read the law itself.[1]

[1] Respecting this law Böckh writes in his Dissertation on the silver mines thus:

"One of the chief advantages enjoyed by the mine-owners was the immunity from taxes, which the laws had allowed to property vested in the mines. The fact itself is unquestionable; but, as it occurs in the speech against Phænippus, in which mention is made of relief granted by the State to the mine-proprietors, it might be thought that nothing more was meant than a temporary alleviation for the year in which they had sustained a severe loss; a supposition which is apparently confirmed by the assertion of Æschines, that Timarchus had sold his estates, including two mines, in order to escape serving the liturgies by the concealment of his property. But, as Æschines is not accustomed to weigh his words with great exactness, the fear of the liturgies entertained by Timarchus perhaps extended only to his other estates, together with which the mines were only accidentally mentioned; and even if mines did not oblige the possessor to perform liturgies, yet the possession of them strongly confirmed the idea entertained of a man's wealth, and the public opinion on this subject had no slight influence upon his nomination to an official charge. In the speech against Phænippus, however, the orator would not have omitted to remark that the immunity of the mines was only introduced a short time before for the purpose of relieving the possessors, if such had been the case; for, as the complainant is particularly earnest in urging the welfare of the people in opposition to that of the mine-owners, it would have suited his purpose to mention the privilege recently accorded to them; but, instead of this, he speaks in a general manner of the laws by which immunity had been granted to the possessors of mines. It is necessary therefore to consider this immunity as established by laws of ancient standing; but whether intended as an encouragement to mining or not, is another question. Are we to suppose that the people of Athens, from no other motive than that of favouring a particular department of industry, would have exempted a large number of their citizens from liturgies and taxes? * * * What renders this the more improbable is, that a large portion of the mine-owners were extremely wealthy in certain times; and any person might, when he pleased, have withdrawn himself from the public services, by purchasing and working mines. My opinion is, that this immunity could not have been con-

Stop one moment, if you please. I made this proposal before to Phænippus, and now again, men of the jury, I offer it him again of my own accord—I will surrender to him the whole of my property, including that in the works, if he will only deliver up to me his piece of border-land free from incumbrances, as it was when I first went to it with witnesses, and if he will replace again the corn and wine and other things which he has carried away from the farm-buildings after removing the seals from the doors. Why do you go on talking and clamouring, Phænippus? I have in former times by my own bodily labour and exertions reaped considerable profits from the silver-works—I acknowledge it; but I have lost all my gains, except a small fraction. You, who are now selling from your farm barley at eighteen drachms and wine at twelve drachms, are a rich man, as one might expect, when you make more than fifteen hundred bushels of corn and above seven thousand gallons of wine. Ought I then to continue in the same class, if the same fortune does not attend me as in former days? Never allow

ceded as an encouragement to mining, but only upon a legal principle. The mine-proprietor was a tenant in fee-farm, who was permitted the use of public property in consideration of the payment of a sum of money, and of a portion of the yearly produce as rent. But the property-taxes and liturgies only fell upon freehold property, while the mines, being conveyed by the people subject to the payment of rent, were for this reason tax-free. Whether slaves were included among the property vested in mines, I do not venture to determine: there being however no reason of any cogency why a tax should not have been imposed upon them, it appears to me more probable that by the property in the silver-mines, we are only to understand the mines which had been granted. A legal consequence of the exemption of the mines from taxes was their exclusion from the property which was made over in the exchange."

The following are the remarks of A. G. Becker in reference to this provision of the Athenian law, and to the tricks practised on one another by the parties to an exchange.

"Phænippus made the same kind of charges against his opponent as had been made against himself, as one sees from page 1044; and nothing indeed was easier, than that a person intending to offer the exchange to another should contrive some time before to invest his money in mines, which by Solon's law (singularly enough) were not included in the property that passed by the exchange. From all this it is clear, that the regulation in question, though it tended to maintain equality among the citizens of Athens, must in a degenerate age have led to a corruption of their morals."

such a thing as this; it would be contrary to justice! Take your turn, Phænippus; enter for a short time into the rank of those who serve the public offices; since the people in the works have been unfortunate, and you agriculturists enjoy more than your fair share of prosperity. You have been for a pretty long period receiving the income of two estates, that of your natural father Callippus, and that of him who adopted you, Philostratus the orator; and you have never done anything for your countrymen. The inheritance which my father left to each of us, my brother and myself, was only forty-five minas, on which it is not easy to live: but your fathers possessed such riches, that there stands a tripod offered by each of them in honour of their choragic victories at the Dionysia. And I do not grudge the honour; for men of wealth ought to make themselves useful to their fellow-citizens. Show, Phænippus, that you have expended a single copper coin for the benefit of the state—you who have inherited two properties liable to public charges! You cannot show it; for you have learnt the trick of concealment and evasion and doing everything to escape the public service. I, on the contrary, will show that I have expended large sums of money—I who received so slender an inheritance from my father!

First however read me that law which declares that no mining property shall be included in the inventory. Read also the challenge, and the depositions showing that the respondent Phænippus has inherited two estates liable to public charges.

[*The Law. The Challenge. The Depositions.*]

There is one thing, men of the jury, and one thing only, in which Phænippus the respondent can be shown to have displayed public spirit. He is a clever and spirited breeder of horses, being young, rich, and strong. What is the positive proof of this? He has given up riding on horseback, and in lieu of his war-horse, which he has sold, has purchased for himself a chariot, (young as he is,) that he may not travel on foot; so luxurious is he become. He has put down the chariot for me in his schedule, but of the barley and the wine and the rest of the farm-produce not a tenth part. He deserves to be let off now, (doesn't he?) when he has been

so public-spirited and useful both in his person and in his property. He deserves something very different, I should say. While it is the duty of an honest jury to give a respite, in case of need, to those citizens who in their time of prosperity cheerfully serve public offices and remain in the list of the Three-hundred; you should deal otherwise with those who regard all money spent in the public service as lost; you should bring them into the foremost class of tax-payers, and not suffer them to run away from their obligations.

Read me first the deposition, and afterwards his inventory.

[*The Deposition. The Inventory.*]

Never mind that. True it is, men of the jury, Phænippus carried away many things from the buildings, opening the chambers that were sealed, as has been proved in evidence, and leaving just what he liked; and two months afterwards he gave me the inventory of his property. However, no more of that. Read from the words—"upon this property I owe the debts following"—

[*The Inventory.*]

Stop. This Aristonoe, men of the jury, is the daughter of Philostratus, and mother of the respondent. He says that a debt is owing to her for her marriage portion, of which the laws make him the owner; he tells a falsehood therefore, and makes out his inventory incorrectly. How is it, Phænippus, that I, although my mother is alive and remains a member of our family and brought a marriage portion into it, do not schedule the portion as a debt to her and try to impose on the jury, but allow my mother to share what I possess, whether I have my own estate or that of Phænippus? The reason, my good sir, is, that the laws so command me. But you violate the laws in everything. Read another.

[*The Inventory.*]

You hear, men of the jury. He says that he owes upon the land a talent to Pamphilus and Phidolaus of Rhamnus jointly, and four thousand drachms to Æantides of Phlyus, and fourteen minas to Aristomenes of Anagyrus. How comes it, Phænippus, when I asked you in the presence of witnesses if you owed anything upon your border-farm, and when I requested you to show me any tablet of mortgage that was,

upon it, and protested against any fictitious creditors springing up afterwards to my prejudice[1]—how comes it that you did not disclose any of these debts then, but that now, when you have given me your inventory two months after the time, the law requiring it to be given within three days, creditors have made their appearance, and debts of more than three talents? The reason, my good sir, is plain. You are simply contriving, that you may have private debts to the same amount as the debt which I have incurred to the state. That your account is false, Phænippus, and that you have come into court a perjured man, I will prove this very minute beyond a doubt.

Please, Usher, to take the deposition of Æantides and Theoteles, whom the respondent has falsely entered as his creditors for four thousand drachms; he having paid them long ago, not voluntarily, but after a judgment obtained against him. Read.

[*The Deposition.*]

Here, men of the jury, is a person, who has made out an inventory that is manifestly fraudulent from beginning to end—who has paid no regard either to the laws which fix the time in which the inventory should be made out, or to those private agreements which we are accustomed to consider as equally binding—who, further, has broken the seals of the buildings and carried away the corn and the wine that was stowed inside—who, in addition to this, has after the exchange sold timber to the value of more than thirty minas, and (what is worst of all) who has concocted false debts for the purpose of the exchange! Will you then decide that this person has made out an honest inventory? Far be such a thing from your thoughts, men of the jury! Failing to get your verdict, what is one to have recourse to—when wealthy men, who have never done any good to you, who produce a large quantity of corn and wine and dispose of it for treble the price they did formerly, obtain undue advantage in your courts? Let not this happen now, I entreat you; but, as you have given public relief to all those engaged in the mining business, so now afford relief to me in my

[1] Pabst—"und Dich vor Zeugen beschwor, nicht etwa erdichtete Schuldner auftreten zu lassen."

private capacity. Surely, if I had been your slave, instead of your fellow-citizen, yet, seeing my industrious habits and my good will to you, you would have allowed me a respite from my heavy charges, and called upon one of the rest who was shirking his duty. I ask for the like treatment under existing circumstances. Hereafter, when I have paid you the three talents for which I became liable and have recovered my losses, you will relieve some other distressed person and come upon me. But now, men of the jury, discharge me, I beseech you. I have made out an honest case, and I implore you to give me your assistance, and not suffer me to be oppressed by my adversaries.

APPENDIX I.

TRIBES AND TOWNSHIPS.

Of the more ancient divisions of Attica, and of the four tribes which existed before the innovations of Clisthenes, it is not my intention to give an account here. I shall content myself with referring to my epitome of the subject under title *Tribus* in the Archæological Dictionary, and to the authorities there indicated. Let the reader only bear in mind, that each tribe was divided into three *φρατρίαι*, *fraternities*, or *clans*, (as I have translated it,) analogous in their political relations to the Roman *Curiæ;* and each *clan* into thirty *γένη*, or *families*, in the larger sense of the term *family*, corresponding to the Roman *Gens*. Each family was distinguished by a name of a patronymic form, derived from some hero or mythic ancestor, as Eumolpidæ; though in process of time, as might be expected, these divisions did not necessarily import family connexion. The members of the clans and families had their respective religious rites and festivals, which were preserved long after the communities had lost their political importance.

Before the time of Solon there was a gradation of ranks, said to have been established by Theseus; the *Eupatridæ*, or Nobles; the *Geomori*, or Agriculturists; and the *Demiurgi*, or Artisans. Solon abolished these distinctions, and introduced his property qualification, of which I have spoken elsewhere. (See Volume I. Appendix IV.) He however made no change in the constitution of the ancient tribes; which were thought to keep up artificial distinctions, not agreeing with that fusion of all ranks, which it was the object of a later generation to accomplish; and accordingly, after the expulsion of the sons of Pisistratus, the four old tribes were abolished, and the whole state reorganised.

Clisthenes, the leader of this democratic reform, (whose institutions continued to be in force, with some few interruptions, till the overthrow of Athenian independence,) created ten new tribes, first dividing the whole territory of Attica into a hundred parts, which he called *δῆμοι*, or *townships*, and assigning ten of these to each tribe; not however ten contiguous ones, but so that each tribe might be composed of townships locally separate. The object of this arrangement was, that by the breaking up of old associations a perfect

revolution might be effected in the habits and feelings, as well as in the political organisation of the people. The clans and families continued to exist as private communities, and to preserve their peculiar religious observances, with which Clisthenes did not choose to interfere. Many priestly offices belonged by ancient right to certain families; and the removal of all distinction between them would have been attended with a shock to religious sentiment. While however they were retained for these and other private purposes, their political importance was mostly transferred to the new corporations. And they were kept quite distinct, so that people of the same clans and families might belong to different tribes and townships.

The tribes were named from the ancient Attic heroes, Cecropis, Erechtheis, Pandionis, Ægeis, Hippothoontis, Œneis, Acamantis, Antiochis, Leontis, Æantis. Such was the machinery of the new system, that every tribe had an equal share of political honours and power. The Council of five hundred was constituted by choosing fifty from each tribe. The six thousand jurors were obtained by taking six hundred from each. So of the ten Generals, the ten Phylarchs (who commanded the cavalry), the ten Auditors, the ten Treasurers, &c. &c.; one was chosen from each tribe. All these whom I have mentioned were taken from the tribes, but chosen by the people at large, either by lot or suffrage. Some other public functionaries however were elected by the tribes themselves, as the Shipbuilders, *Trieropæi*, the Conservators of walls, *Teichopæi;* likewise the *Choragi*, the *Gymnasiarchs*, and *Architheori* (as to whom see Volume III. Appendix II.).

There were tribe-meetings as well for the transaction of business imposed by the state, as for the regulation of their corporate affairs: for every tribe had lands and property of its own, its own business, its own feasts, its own officers. Of these, the principal were the Superintendents, *Epimeletæ;* who presided at the tribe-meetings, and who, as we learn from the oration against Midias, had various duties connected with the scenic and other exhibitions at the public festivals; for example, to see that the Choragi were duly nominated, and performed the parts assigned to them; to preside at the games and contests, to assist in the preparations for them, preserve order, and the like. (See Schömann, De Comitiis, 368—375.)

That the tribes audited the accounts of officers entrusted with their monies, and had power to impose pecuniary fines upon those who were found guilty of embezzlement, may be collected from the oration against Theocrines, who was condemned by his tribe (the Leontian) to pay seven thousand drachms to the hero of the tribe,[1] for the payment of which he afterwards made an arrangement under the sanction of a decree of his fellow-tribesmen. (See Schömann, ibid. 373.)

The townships, which were at first a hundred in number, were in process of time subdivided, and in the time of Strabo they amounted

(1) ἃς ὦφλεν ἐν ταῖς εὐθύναις τῷ ἐπωνύμῳ τῆς αὑτοῦ φυλῆς. Demosth. cont Theocrin. 1326.

to a hundred and seventy-four. This subdivision was found convenient, in consequence of the increase of population, the building of new towns, and similar causes. Two new tribes had been created in the year B.C. 307, which necessitated some change in the *demi*. A list of all the *demi* is given in Reiske's Index Demosthenicus. Some of them took their names from the towns, villages, or places within their precinct, as Marathon, Acharnæ, Brauron, Sunium, Phalerum, Piræus, Lampra, Icaria, Thoricus, Decelea, Œnoe, Eleusis, Rhamnus, Melita, Colyttus: others from the families which settled in them, as the Butadæ, Dædalidæ, Ionidæ, Semachidæ, Cothocidæ, Pæonidæ, Philaidæ, Cyrtiadæ, Chollidæ, Scambonidæ, &c. The largest of them all was Acharnæ, famous for having given name to the Acharnians of Aristophanes, and which, as Thucydides tells us, furnished not less than three thousand heavy-armed soldiers in the Peloponnesian war.

The townships, like the tribes, had their corporate affairs, as well as those of a more public nature, to attend to. Each of them had its own separate property, its lands, temples, and religious worship; its priests, councillors, and officers. The fellow-townsmen frequently met, either for elections, or for financial business, or other purposes. Their most important meetings were held at Athens; which was probably most convenient; for men did not necessarily reside in the district of which they were members. The chief magistrate of each township was called the demarch, (prefect or mayor,) who, besides local duties, performed many of considerable importance to the whole commonwealth. He convened and presided at the corporate assemblies, kept the books of his township, collected rents or debts that were due to it. He kept a register not only of the corporate property, but of the landed estates of all private persons (whether townsmen or not townsmen) within his district; and from this he made returns for the purpose of the property-tax assessment.[1] He also furnished a list of such of his fellow-townsmen as were fit to serve in war, as we learn from the oration against Polycles (page 1208). A law is cited by Demosthenes in the speech against Macartatus (page 1269), requiring the demarch to provide for the burial of the dead, in case of neglect by the heirs and relations, (to whom he was first to give notice,) and imposing on him, in case of default, a penalty of a thousand drachms.

There were forty itinerant judges, called sometimes the Forty, and sometimes the District judges,[2] who made circuits round the various townships, to decide small causes, not exceeding the value of ten drachms, and also actions of assault and battery, and certain actions of trespass, and charges of rape. These they decided without a jury [3]

(1) An Athenian citizen might possess land in a foreign township, paying a small rent or acknowledgment to the demarch. Such possession was called ἔγκτησις. Apollodorus (in the Oration against Polycles, 1208) says, he was returned in three townships as a person fit to pay the προεισφορά.

(2) δικασταὶ κατὰ δήμους. They were originally thirty; ten were afterwards added, when the thirty tyrants had rendered that number odious.

(3) See Meier and Schömann, Att. Proc. 544. Schömann, Ant. Jur. Publ. 267 The speech of Demosthenes against Conon was delivered before the District judges.

But the most important political service rendered by these corporations was the preservation, by means of their register, of a genuine list of Attic citizens. For every Athenian was obliged to be a member of some township, and no man could be admitted to exercise any civic rights, until his name was entered in the roll. In the days of their prosperity the Athenians were proud of their citizenship, and careful to exclude those who were not entitled to it from its honours and advantages. Occasionally it was conferred, by way of distinction, upon some foreigner who had done service to the country; as upon Sadocus, the Thracian prince, their ally, in the beginning of the Peloponnesian war; and in later times the honour became more cheap, and was conferred upon adventurers like Charidemus; but those were generally cases where it was a mere honour, not attended with the advantages which a resident at Athens would derive from it, and which it was always more difficult to obtain. There were exceptional instances; such as that on the first creation of the townships, when Clisthenes, in order to strengthen the popular party, made a new creation of citizens, including even slaves; and the occasion after the plague, when, the strength of the nation having been wasted both by war and by disease, it became necessary to recruit it by new blood. But, setting aside these exceptional cases, we find that the Athenians took the utmost precaution by law, to prevent the intrusion of aliens into their community.

The son of an Athenian citizen, upon attaining his eighteenth year, or as soon after as was thought proper—but not (it seems) after the completion of his twentieth year—was taken by his father or guardian to a meeting of his fellow-townsmen, to have his name entered in the register of the Demus. This was called the heritable register,[1] because the entry therein entitled him to take possession of any property which he became heir to. Commonly those townsmen would attend the meeting, who were friends or acquaintances of the candidates for enrolment: in case of any meditated opposition, there would be a large attendance. The father or guardian proved the birth and civic origin of the youth. Any member was at liberty to object upon good ground, such as illegitimacy, or foreign extraction either by the father's or mother's side. The members present were sworn to adjudicate according to law, and, after hearing the evidence, the majority decided whether the party objected to should be enrolled or not. Upon his admission to the register, the youth became a member of the township, and entitled to his heritable and civic rights. His name was at the same time entered in the assembly-list,[2] kept by the demarch, showing who were entitled to take part in the popular assembly. He was then a full citizen in every respect; only he could not serve on juries, nor hold offices of state, until the age of thirty.

(1) ληξιαρχικὸν γραμματεῖον. To enter upon an inheritance was called λαγχάνειν κλῆρον, and an inheritance λῆξις.
(2) πίναξ ἐκκλησιαστικός.

His civic designation and full address (as we should say) was his own individual name joined to that of his father and his township—thus—"Demosthenes, son of Demosthenes, of Pæania." Of the importance of this title we have had an illustration in the case of Mantitheus against Bœotus.

When an orphan was introduced to his fellow-townsmen for enrolment before his twentieth year, Schömann thinks that, as he would take immediate possession of his inheritance, he underwent a personal examination, to show that he had arrived at a state of manhood, so that, if he were approved, he would be at once admitted to his majority;[1] otherwise, it would be postponed for some time longer. As to this however there is a good deal of obscurity.

Whoever, not being a lawful citizen, presumed to act as one, whether his name was in the register or not, might be prosecuted and severely punished, as I have already shown: (Volume III. Appendix viii. page 345). As a further precaution against the admission of spurious members into the corporate bodies, they were required occasionally by a decree of the people to revise their registers, and to expunge those names which should appear, either by fraud or by mistake, to have been improperly entered. When any such revision was ordered, the townsmen met on the appointed day in the city of Athens: the names were called over: if any one was objected to, the grounds of objection were stated, and the case was heard, with the evidence on both sides; the hearing and adjudication took place in the same way as upon an objection to an original enrolment.[2] A member who was ejected might appeal to a jury; but, if he failed to prove his title, he was sold for a slave.

Our knowledge upon this subject is derived mostly from the oration of Demosthenes against Eubulides; composed by him for one Euxitheus, a member of the Halimusian demus, who, being ejected on a revision, had appealed to the Athenian court. He complains strongly of the unfair and illegal manner in which he had been treated at the meeting; imputing his expulsion to a cabal got up against him by Eubulides, whom he had made his enemy by giving testimony in a court of justice. Eubulides (he says) had contrived that his case should be brought on late in the day. Out of seventy members who had been present in the morning, forty had gone home, as they resided in the Halimusian district, which was four or five miles from Athens; most of those who remained were the party combined against the appellant, and some of them had two or three ballots furnished by Eubulides, who presided at the revision; in fact, it was found, that there were twice as many ballots put into the box

(1) Thus he explains the expression in Demosthenes, ἄνδρα εἶναι δοκιμασθῆναι, which Petit and others have understood to signify no more than the birth scrutiny. (De Comitiis, 78, 79.)

(2) It was called διαψήφισις, and a member struck off the register was said ἀποψηφισθῆναι. See on the whole of this subject Schömann, De Comitiis, 376—384 and article *Demus* in the Archæological Dictionary.

as there were members present. He charges his opponents with jobbing and conspiring in other cases besides his own. He insinuates, that there was a prejudice against him on account of his poverty, his mother being a vendor of ribbons, and having taken children to nurse; and also, that he had made himself unpopular formerly, when he was prefect of the township, by enforcing payment of rents and dues. To prove his legitimacy, he calls, besides his relations, some members of his clan and family; showing that, upon his father's marriage, the members of his clan had partaken of the marriage sacrifice; that he, when a child, had been introduced to the clan, and taken to religious worship at the temples.

Here I may observe that, although for political purposes there was (in general) no necessity for being admitted into the clans and families, as there was to the townships, yet it was usual for all of pure Attic blood to be so admitted to them; and therefore the fact of a man's being an acknowledged member of those associations afforded strong positive proof of his civic origin. And we find that the clansmen and kinsmen were frequently called as witnesses to prove family matters.[1]

There was a distinction made by the law in cases of adoption. For it was necessary that an adopted son should be registered not only in the township, but also in the clan of the father, as we learn from Isæus.[2]

APPENDIX II.

GUARDIAN AND WARD.

The duties of guardians at Athens did not materially differ from those which have been annexed to the office in other countries. The father had the power of appointing guardians by will, to whom generally was confided the personal care of the infant, as well as the management of his property. If there was no testamentary guardian, it devolved upon the Archon, as the official protector of orphans, to appoint one; just as in England the Lord Chancellor will make a similar appointment, upon an application made on the infant's behalf. It seems that the nearest relation was usually entitled to be nominated, in the absence of a direction by will. Meier has shown that we cannot depend upon the statement of Diogenes Laertius, that by a law of Solon the infant's nearest relation by the father's side could

(1) See Isæus, De Philoctem. Hered. 13. Ed. Bekker. De Pyrrh. Hered. 91, 92. De Ciron. Hered. 24—26. De Astyph. Hered. 11—13. Demosthenes, cont. Neær. 1365.

(2) De Apollod. Hered. 32, 33. De Aristarch. Hered. 12, 22. De Menecl. Hered. 18—21.

not be his guardian. There are in fact several passages in Isæus, which show the contrary,[1] and the practice of appointing the nearest paternal relatives by will seems to indicate what the law was.[2] If there were no relatives, or none fit, or perhaps none who chose, to undertake the office, then it fell upon the Archon to select one from the whole body of Athenian citizens.

The duties of the guardian were, to take care of the person of his ward, and provide for his maintenance and education; also to manage and improve his estate, so long as he remained in a state of pupillage. Towards third parties and towards the state he was the ward's legal representative: for example, in actions by or against the ward, he acted as his *κύριος*, *prochein amy*, or next friend; (see Volume III. Appendix IX. page 373:) and we have learned from the speech against Aphobus (ante, page 94,) that he made returns on his behalf for the property-tax assessment, the only public charge from which a minor was not exempt, and made the necessary payments in his name to the state. If the mother remained with the orphan, the guardian was bound to make provision for her maintenance also.

With respect to the administration of the ward's estate, as well as

(1) De Dicæog. Hered. 18. Ed. Bekker. Δικαιογενὴς ἐγγυτάτω ὢν γένους ἐπετρόπευεν. De Cleon. Hered. 10—13. The heirs of Cleonymus, claiming his estate, allege that Dinias, their paternal uncle, was their guardian, and that Cleonymus made a will excluding them from the inheritance, because he had quarrelled with Dinias, and did not wish that his property should be under the control of Dinias after his death. Compare also the argument to the oration De Arist. Hered.

(2) The common law of England took the precaution of excluding from guardianship *in socage* (as it was called) those relatives to whom the inheritance would descend, giving it to the next of kin, to whom the inheritance could not *possibly* descend; therefore, if the land descended to the heir on the part of the father, the mother, or other next relation on the part of the mother, had the wardship; so, if the land descended to the heir on the mother's side, the father, or his next of kin, had the wardship.

The Roman law as to this point was like the Athenian; and therefore the Satirist says—

> Pupillum utinam, quem proximus heres
> Impello, expungam. Persius, ii 12.

There was a law of Charondas by which the management of the minor's property was given to the nearest paternal relative, while his education was entrusted to the next of kin by the mother's side. The same middle course was adopted by the Scotch and the ancient French law, committing the pupil's estate to the person who was entitled to the legal succession, because he is most interested in preserving it from waste, but excluding him from the custody of the pupil's person.

Kent in his Commentaries (II. 223) has the following remarks upon this:

" The English, Scotch, and French laws, proceeded on too great distrust of the ordinary integrity of mankind. They might with equal propriety have deprived children of the custody and maintenance of their aged and impotent parents. It is equally a mistake in politics and law, to consider mankind degraded to the lowest depths of vice, or to suppose them acting under the uniform government of virtue. Man has a mixed character, and practical wisdom does not admit of such extreme conclusions. The old rule against committing the custody of the person and estate of a lunatic to the heir at law has been overruled as unreasonable. If a presumption must be indulged, it would be in favour of kinder treatment and more patient fortitude from a daughter, as committee of the person and estate of an aged and afflicted mother, than from the collateral kindred. The fears and precautions of the lawgivers on this subject imply, according to Montesquieu, a melancholy consciousness of the corruption of public morals."

other matters, a testamentary guardian was bound to execute the trusts of the will. A guardian appointed by law had a discretionary power, but not an unlimited one. It seems that it was not lawful for him to carry on a trade for his ward, or to risk his estate in dangerous speculations, such as adventures at sea. It was his duty however to increase it, if possible; and the most approved courses are said to have been, either to purchase lands, or to lend out the whole property on good security during the whole term of the ward's minority.[1]

The property might be lent out either to a single person, or in parcels to several. The former method appears to have been the most profitable; and therefore, in the case of a safe borrower, the most eligible. We have read how Theogenes, having borrowed three talents and thirty minas, the property of Antidorus, paid back upwards of six talents to him at the end of six years: (ante, page 108). It may be thought strange, that such large interest should be paid on loans by persons who were obliged to give good security for repayment. We can only conclude that very considerable profits could be made in those times by mercantile speculations. Compound interest appears to have been unknown.

It was competent for the guardian to lend the estate in this way by private contract. But the better course, if he wished to relieve himself from responsibility, was, to apply to the Archon, and act under his authority. The Archon then held a court, of which public notice was given, and the estate was lent to the highest bidder, approved of by a jury.[2]

If the guardian violated his duty, by neglecting the maintenance or education of his ward, by ill-treatment of his person, or by mismanaging his property, or by any kind of fraud or injury, he was liable to a criminal prosecution, which any Athenian might bring against him during the term of the ward's pupillage. Of the different forms of procedure, and the punishment which attended any misconduct of this kind, I have already spoken: (see Volume III. Appendix viii. pages 351, 352, 360, 364). One consequence of conviction was the removal of the guardian; which indeed, if accomplished early enough, would be the most efficient remedy; for a fraudulent guardian might in the course of a long minority do irreparable mischief. Demosthenes says in the first speech against Onetor, (ante, page 136,) that the frauds of his guardians had at an early period become notorious, and that many meetings were held on the subject before the Archon. This was probably with a view to get up a criminal prosecution.[3]

(1) μισθοῦν τὸν οἶκον. See Lysias, cont. Diog. 35. Ed. Bekker.

(2) Isæus, de Philoct. Hered. 44, 45. ἐπειδὴ τὰ δικαστήρια ἐπληρώθη, ὁ μὲν ἄρχων προεκήρυττεν, οἱ δ' ἐμισθοῦντο.

(3) In the oration against Nausimachus and Xenopithes, which is translated in this volume, it is mentioned that on a φάσις against the guardian for not having let the estate, the uncle of the wards persuaded the jury to let him administer the estate. The expression of an opinion by the jury would very likely guide the discretion of the Archon. (See ante, page 250: origin. page 991.)

Upon the ward's attaining his majority, *i.e.* on the completion of his seventeenth year, it was the guardian's duty to introduce him to his fellow-townsmen, and have his name registered. He was then bound to put him in possession of his estate, and to render him an account of his own administration of it. If he failed to render an account, or if he rendered a false one, or if he refused to give possession, or if he had committed any breach of trust, the ward might bring an action,[1] to recover compensation for the injury sustained; or, in case the guardian had died, he might bring an action for compensation[2] against the guardian's representatives. The case of Nausimachus and Xenopithes is an example of such an action. These men, after the death of their guardian, commenced actions against his sons, who plead, (as we have seen,) that their father settled the claim against him in his lifetime for three talents.

The right to sue a guardian for breach of duty was, like most other personal causes of action, barred by the lapse of five years. This was the term prescribed by the Athenian statute of limitations.[3]

I have hitherto spoken of a single guardian only, for the sake of convenience; but it must be understood, that a father had power to appoint any number of guardians that he pleased by his will; and probably a similar discretion was vested in the Archon. Meier infers from the case of Demosthenes, that, where there were several guardians, they incurred a several and not a joint liability. The inference however is not conclusive. It may be that, when the breach of trust was the joint act of all, the ward might have the option of suing them jointly; otherwise, where they had not acted together; for it would be unjust to make them responsible for one another's misconduct. But we have too little information to determine such a point. Demosthenes made separate charges against each of his guardians. Though their negligence might be considered a joint offence, their pecuniary frauds or defalcations were distinct. (See ante, page 96.) From the speech against Nausimachus we learn, that each of the two wards sued each of the four sons of the guardians, making eight actions out of a single cause of action; which may be thought to indicate, that it was the policy of the Athenian law to favour the severance of actions.

No legal recompense was allowed to guardians for the performance of their duty; but, as in our own country it is very common for testators to give legacies to their executors and trustees, so we may reasonably suppose, that the father of Demosthenes, in bequeathing large gifts to the three persons whom he left protectors of his family, only did that which was frequently done by his countrymen. Meier suggests, that the general dishonesty of the Athenian character rendered it necessary thus to bribe guardians to be honest.[4] If we

(1) δίκη ἐπιτροπῆς. (2) δίκη βλαβῆς.

(3) See the Archæological Dictionary, title προθεσμία.

(4) Bei dem grossem Mangel an Redlichkeit und Gewissenhaftigkeit, den wir im Character der Athener überhaupt wahrnehmen.

can trust the statements made in the few speeches which have come down to us upon this subject, they certainly make out frightful cases of violated trust. The case in Lysias is far worse than that of Demosthenes. Diogiton, who was both grandfather and uncle of his wards, (for he had given his daughter in marriage to his brother,) had received from the parent, or collected after his death, upwards of fourteen talents; of the whole of which (nearly) he defrauded the children, and, when they came of age, turned them into beggary out of his house.

See on this subject Meier & Schömann, Att. Proc. 293—296. 442—455.

APPENDIX III.

HUSBAND AND WIFE.

The condition of women at Athens and in the other parts of Greece, their general treatment, and the position which they held in relation to the other sex; all these matters have been fully and ably discussed by Becker in his Charicles, and I shall only briefly advert to them here.

It may be gathered from the Homeric poems and the Attic tragedy, that in the earlier times of Greece women held a more elevated position than we find them holding in the historic period. They had more freedom, a more honourable place in the household, and greater influence both at home and abroad. It has been particularly observed, that, while in early times the husband is described as purchasing his bride from her parents, in later times he expected a suitable dowry to be given with his wife by the father or next of kin.

It is to the usages of Athens, in regard to the female sex, that I am principally directing the reader's attention; though these did not materially differ from the usages of other Greek states, except Sparta, where the manners of the women were as singular and remarkable, as the institutions of their countrymen in general.

The main object of the Athenians, in their treatment of women, seems to have been, to keep them in a state of retirement and seclusion, to maintain a reserve and modesty in their conduct and deportment, and, by confining them wholly to what were deemed feminine occupations, to hold them (socially and intellectually) in subjection to their husbands and guardians. Although this system led to many evils, it is said that the Athenian women were distinguished above most others for modesty and decorum in their dress and behaviour.

Their early training was such as to prepare them for a life of this sort. Athens, with all her literary tastes, had no educational institution for women; and not only that, but there were no private schools for them, nor any mental tuition at home. The education of the Athenian girl was left entirely to her mother and her nurse. From them she got a smattering of letters, learned perhaps to read and write, and, what was considered still more important, to weave and spin, and to cook. She dwelt entirely in the Gynæconitis, or that part of the house which was appropriated to females; never went into any general society; lived, in short, very much the life of a Turkish lady, seeing only her female relations and domestics, and rarely even leaving the house, except on special occasions, as when she had to walk in a religious procession, or to join some festival from which men were excluded.

The married life was in accordance with what the single had been; though, as might be expected, the wife had more freedom and more power in the domestic establishment than had been entrusted to the daughter. She was in some respects the mistress of the house; the keys of the apartments were delivered to her; she had the custody of the furniture and stores, the superintendence of female slaves, and general management of household affairs and duties, such as cooking, nursing, &c.

Yet, though mistress of the house, the Athenian wife was not her own mistress. She lived, as she had done before marriage, in the female apartments, and was excluded from all male society. If her husband had company, she did not sit at table with them, not even with her own relations of the male sex. It was expected that she should not leave the house without her husband's knowledge; it was not respectable to go out without a slave; and to be seen at an open window was considered indecorous. Hence it is that, when the news of the disaster of Chæronea had reached Athens, the women, anxious as they must have been to get intelligence of their husbands and relatives who had been in the battle, are represented as coming no farther than to the doors; and even this is mentioned as being unseemly, and a sign of their great distress. (See Volume II. Appendix IX. page 392.)

We read of legal restrictions against the women going abroad. Plutarch in the life of Solon (21) says, that he passed a law forbidding them to go out at night except in a chariot with a torch before them; and Athenæus (XII. 521) mentions a similar law at Syracuse, which forbade free women to go out at all after sunset. The tendency of Solon's legislation apparently was, to curtail the liberty of the female sex. He passed measures to check their extravagance in dress, and their disorderly conduct at festivals, sacrifices, and mournings. There are said to have been officers called *Gynæconomi*, whose business it was to see that Solon's regulations were observed, and to punish improper excesses and breaches of

decorum. It has been thought with some reason, that these officers were not appointed till a later period. We find nothing about them in the early Athenian writers; and the authority with which they are said to have been invested was a little inconsistent with the freedom of the Athenian democracy. For example, they had power to visit private houses on festive occasions, such as weddings, and to see that the lawful number of guests, which was thirty, was not exceeded. This savours somewhat of a later age. If the Gynæconomi were a Solonian institution, their functions were perhaps more limited in the early times.

From the passage in Plutarch, as well as from Aristophanes and other sources, we may collect, (what indeed is natural enough,) that, when the women had their seasons of indulgence, as at the Thesmophoria, the Bacchic mysteries, and the like, they indemnified themselves for the dull seclusion to which they were ordinarily condemned. (See Volume III. Appendix VI. pp. 281, 307.)

With respect to play-going, the better opinion is, that the women were allowed to see tragedies, but not comedies. (Volume III. Appendix VII. p. 323.) Becker however has shown, that they sat separate from the men. (Charicles, Transl. p. 408.)

It might perhaps have been expected, that it would have been a part of a wife's duty to go to market, to purchase provisions for the house. It is certain however, that this duty never devolved upon the wife of an Athenian citizen, who was well to do in the world, and could afford to keep a slave; which almost every respectable Athenian did; for slaves were numerous and cheap, and carrying, as well as other manual labour, was considered undignified even in a man. The marketing therefore was done by the slaves, male and female. This was the ordinary rule. Poverty of course made an exception; and there were women, even the wives of citizens, who sold articles in the market, such as bread, fruit, herbs, chaplets, &c. We have seen how Euxitheus complains of the prejudice excited against him in his township because his mother sold ribbons (ante, page 309). And the taunts of the comic poet about the mother of Euripides are well known. (See the Charicles, Transl. pp. 287, 469.)

It being deemed of so much importance to preserve feminine modesty, one would suppose that the men would take especial care to conduct themselves with decorum in the presence of females, and to abstain from rude or indelicate language. That good taste and propriety required this, was undoubtedly the general opinion of the Athenians, as we know from their writings; though there is too much reason to suppose that the duty was often violated. (See the Oration against Midias, Vol. III. p. 91.) Becker, referring to this passage, and quoting the words of Terence, "pudet dicere hâc præsente verbum turpe," says—"A beautiful observance, had it sprung from true moral grounds, and not rather from motives of respect to the κύριος, whoever he might be"—(Charicles, p. 472). It was

undoubtedly an affront to the husband or guardian of an Athenian lady, to speak bad language in her presence; indeed it was an act of outrage in a stranger to intrude at all into the female apartments, and we have seen that Pantænetus treated this as a ground of action against the intruder, (ante, p. 240.) Demosthenes however gives us to understand, that offensive language before females was a thing of itself to be reprobated, irrespective of the insult to the guardian, and was generally repugnant to Athenian sentiment. Does the orator attribute to those whom he addresses a higher tone of sentiment and morality than really belonged to them? Often he does; and it is the policy and duty of a good speaker to do so; but there must be a chord which he can strike in the minds of his hearers, or all appeal to them will be in vain.

The Athenian husband was desirous that his wife should look up to him as the superior being; which she could hardly do, unless he conducted himself as became an Athenian citizen, or, as we should say, a gentleman, (καλοκάγαθος.) To do anything undignified in his wife's presence would lower him in her esteem. In the oration against Androtion it is spoken of as a hardship, that a man should be driven to hide himself under the bed, in order to escape the tax-gatherer, and that he should be seen doing so by his wife. (Vol. III. p. 155.) The wife could hardly look up to her husband with respect, unless he were under some corresponding obligations to her. We know from the oration of Andocides against Alcibiades (p. 117,) that, if the husband brought a bad woman into the house, it afforded his wife a legal ground to obtain a separation from him. And ill usage of his wife subjected him to an indictment, as we have seen. (Vol. III. p. 351.)

Looking at the manner in which women were brought up in Athens, and at their general treatment and condition, we can easily suppose, that love (in the sense in which that word is understood in Christian countries) had but little to do with the formation of Athenian marriages. It was indeed a rare thing, that a woman's personal qualities were taken much into account. The case of Callias, who fell in love with Elpinice, the sister of Cimon, and paid her father's debt to the state that he might obtain her hand, may be regarded as an exceptional case. Opportunities for falling in love must have been very scarce. Becker in his Charicles, in order to find a mistress for his hero, (a thing generally considered essential in modern tales,) is obliged to invent an extraordinary incident. When the passion of love was excited, it could not, under the circumstances, have been one of a very refined character.

Marriages were formed chiefly from family and political considerations. An Athenian took a wife to prevent the extinction of his race. This was a duty which he owed to the state, to himself, and to the memory of his ancestors. A religious sentiment was mingled with it. That he should leave those behind him, who would continue to per

form the religious worship of the family, was due not only to the gods, but to the Manes of the departed. Such were his highest motives for entering into the married life. In addition to these, there would naturally be others of an economical character, such as the desire to provide himself with a prudent and trusty housekeeper, to form a good connexion, or to obtain a valuable dowry. In regard to the last point, it was deemed most eligible to espouse a woman of equal fortune and condition. Such a one was less likely to give herself airs, or dispute her husband's supremacy.

A maiden was seldom, if ever, consulted about the choice of her husband. The whole thing was managed by the relations. Plato deplored this, and thought that the young people ought to have an opportunity of seeing each other. But what could be expected in such a state of society? We read of match-makers, προμνήστριαι or προμνηστρίδες, who made it their business to effect matrimonial alliances between their neighbours; though it would seem, they were not in very good repute.

We will now consider marriage in its legal aspects.

It was essential to a strictly legal marriage at Athens, that both parties should be citizen-born. The laws of Solon did not prohibit a citizen marrying a foreigner, and some eminent men in early times, as Cimon and Themistocles, were the sons of foreign mothers; but, as the Athenians became a powerful people, they grew jealous of foreign intermixture, and Pericles passed a law, by which such a marriage was declared illegal, and children by it were deprived of the civic franchise. He himself had a son by Aspasia, in whose favour he procured a special decree of the people, to exempt him from the operation of this law. The violation of it subjected the parties to an indictment, as we have already seen. (Vol. III. Appendix VIII. p. 345.) The speech against Neæra furnishes an example of such a proceeding. The prosecutor accuses Stephanus of having lived in wedlock with Neæra, who was a slave and woman of infamous character, and of passing off her children as his own legitimate issue. Stephanus denies the charge, and says that he kept Neæra only as a mistress, and his children were not by her. This speech, though denied by critics to have been the genuine production of Demosthenes, to whom it is attributed, is undoubtedly a genuine Attic production, and full of instructive information upon the present subject.

We must observe the distinction between a legitimate child, γνήσιος, and a free-born, ἐλεύθερος. A man might live with a concubine, and declare the children that he had by her to be free. (See the law cited in the oration against Aristocrates, Vol. III. p. 184.) Such children, though free, would not have heritable rights, and, if the mother were not an Athenian, they would by the law of Pericles be deprived of the civic franchise.

To make a legal marriage, it was further necessary, that the bride should be affianced, or given away, by her guardian (κύριος,) whoever

that was, *i.e.* her father, her brother, her paternal grandfather, or other nearest relation. (See the law cited by Demosthenes in the speech against Stephanus, page 1134.) Such regular espousals were necessary to give the rights of legitimacy to the children. Cohabitation without espousals was regarded as mere concubinage.

The contract itself was made not (as with us) between the man and his intended wife, but between him and her guardian. Women were incapable of entering into a contract, and therefore (whatever their age) they were required to be given away by the persons, to whom they were subject in law. (See Meier and Schömann, Att. Proc. p. 409.)

A husband might direct by will, that his widow should marry this or that person. So the father of Demosthenes gave his widow to Aphobus, Pasion gave his to Phormio, and the practice seems to have been common. (See ante, pp. 94, 211.) It is somewhat doubtful whether such a testamentary direction was compulsory on the widow; but at all events it superseded the necessity of further espousals.

It would have been odd if Athenian nuptials (like those everywhere else) had not been attended with various ceremonials. There was the sacrifice to the tutelar gods of marriage,[1] the bath taken by the bride and bridegroom in the sacred fountain Callirrhoe, and of course there was the wedding day, with its bridal dresses and garlands, its cakes and sweetmeats, &c., &c. Nor must we forget, that the ladies were allowed to be present on this special occasion. To return however to the legal part of the matter—it appears that no ceremony was actually necessary to bind the contract; the parties might proceed to live together immediately; but it was customary to give a marriage feast on the occasion, and to invite the friends and relations, partly in compliance with religious feeling, and partly to give public notoriety to the wedding, and preserve testimony to its legality. (See what Demosthenes says, ante, p. 140.)

If a woman had no property of her own by inheritance, (and she could have none, if she had a brother,) a marriage portion was usually given to her by the next of kin, by whom she was betrothed. To be married without a portion, if the relations had the means of giving one, was a disgrace either to her or to them, and might cause a doubt to be raised as to the nature of the connexion. The Athenians were liberal in these matters, and many a person would advance money out of his own purse, rather than suffer a friend's daughter to marry portionless. (See ante, p. 110, and Volume II. p. 99.)

The money thus given to a woman upon her marriage was paid to her husband, but was intended as a provision for her, and was usually secured to her by a mortgage of the husband's real estate, or (if he had no real estate) of his personal. The husband had the use and sole management of his wife's property, while they lived together

(1) Προτέλεια γάμων. As to this, and as to the whole subject of the nuptial solemnities, I refer the reader to the Charicles, Translation, p. 482, &c.

but, on a separation, he was bound to restore it to her guardian, and to pay eighteen per cent. interest, so long as he kept it in his own hands. The interest so paid was called alimony or maintenance, as being the interest of that fund out of which the woman had a right to be maintained.[1] The next of kin, to whom the money was restored, became the legal owner thereof, but was bound in honour to apply it to the woman's benefit, and to give it to her again upon a subsequent marriage. Such was the custom of the country; and custom had the force of an obligation.

After the death of the husband, if the wife had no son by him, she returned to the guardianship of her next of kin; if she had a son, the choice was given her, either to stay with him and live under his protection, or to return to her original family. In case she stayed with her son, he became her guardian and the owner of her property, (that is,) if he was of full age; if he was a minor, his guardian of course acted for him.

If the wife died before the husband, her property returned to her next of kin, unless she had children, in which case they took it according to the rules of inheritance.

Thus might property be settled upon a wife at Athens not very differently from the way that it is with us. The various points of law the reader has seen illustrated in the cases of Aphobus, Onetor, Bœotus, and Spudias. The settlements, as we might expect, were not always made in the simple form that I have supposed. For example, in the case of Spudias, the plaintiff says that his wife's fortune was not all paid down to him at the marriage, but one fourth of it was agreed to be paid after her father's death, and it was secured by the mortgage of a house. Demosthenes asserts that the marriage portion of Onetor's sister was not paid down to Aphobus, but it was arranged that the principal should remain in the hands of her former husband, Timocrates, who was to pay Aphobus ten per cent. while he retained it.

That wedding presents, (such as clothes, jewellery, &c.) were sometimes given in addition to the settlement, and so as not to form a part of it; and on the other hand, that such things might be given in lieu of money, and taken into account in making up the dowry, if the parties chose so to agree, as seems to have been the case upon the marriage of Spudias; these are points that may deserve a brief notice, as they have given rise to some discussion. The amount of these wedding presents, (the *φέρνη*, or bride's trousseau, as we might call it,) was limited, as Plutarch tells us, by the sumptuary law of Solon. (See the Charicles, Transl. page 481; and the Attic Process, page 415.)

Hitherto I have been speaking of the marriage of girls who did not

(1) The action to recover this was called *δίκη σίτου*. That to recover the principal was called *δίκη προικός*. Such actions would of course only be brought by the *κύριος*.

inherit their father's estate, which a girl could not do, if she had a brother; for the estate went to him, and she was only entitled (by the custom of the country) to a suitable dowry, that is, one corresponding to her father's or brother's position and means, and such as would do credit to their liberality. A girl however, who had no brother, stood upon a different footing. She inherited the patrimony, and was called an *heiress*,[1] whether the estate were great or small, or even if there were no estate; for she was still the representative of the family, succeeding to its traditions and religious usages. The regulations of the Athenian law with respect to heiresses were peculiar, and arose from the care of the legislator, that all civic families, with their traditions and usages, should be perpetuated.

It was the business of the archon to see that an heiress was duly married. The next of kin, not in the ascending line, had a right to claim her hand, and, if there was any dispute as to the right, the archon held a court for its decision. So far from having power to choose a husband, the heiress was considered as little better than a part of the estate, and was taken with it as a sort of incumbrance. The father however could not disinherit his daughter; for, if he devised his property, the devisee was obliged to marry her. And, as the girl was deemed an heiress in law, whether she had an estate left her or not, if she became by succession the representative of the family, the next of kin was bound, either to take her for a wife, or to give her a portion corresponding to his rank. This was but fair. It was his privilege to marry a rich heiress; his duty to provide for a poor one. And thus the object of the Athenian law, that no civic family should become extinct, was accomplished.

If there was but one daughter, she was the sole heiress; if there were more, they inherited equally, like our co-parceners, and were severally married to relatives, the nearest having the first choice.

The husband of an heiress took her property until she had a son of full age, who was usually adopted into his maternal grandfather's family, and took possession of the estate. He then became his mother's legal protector or guardian, and was bound to maintain her.

It appears by these regulations concerning heiresses, that consanguinity was no bar to a matrimonial union at Athens. Uncles frequently married their nieces; and even brother and sister were allowed to marry, provided they were not by the same mother. Such a union however was not sanctioned by public opinion; and marriage was only allowed in the collateral branches. (See the Attic Process, 406. Charicles, Transl. 477.)

I have lastly to speak on the subject of divorce.

In case of adultery committed by the wife, we have already seen, that the husband was compelled by law to dismiss her, and that she

(1) She was called ἐπίκληρος. The girl who received a dowry only was called ἐπίπροικος, the *portioned*, or *endowed*. See the Archæological Dictionary, titles *Dos Epiclerus*.

was subjected to infamy and severe punishment. (See Volume III. Appendix VIII. page 348.)

In other cases, there is a doubt whether the husband had an unlimited power of dismissing his wife, or whether some cause must not have been assigned. Becker inclines to the latter view, which is in some degree favoured by the mention of an Attic form of action for unjust dismissal.[1] Such an action however may have related rather to the method of proceeding adopted by the husband, than to the causes of divorce. For example, we may presume that he could not get rid of his wife by turning her out of doors, but was obliged to take or send her back to the house of her legal protector, with her clothes and paraphernalia, and in a decent and proper way. Beyond this indeed very little ceremony seems to have been necessary. The main thing which the wife's friends required was, that her portion should be returned with her. Meier observes, that the practice of divorcing, (so frightfully[2] common at Athens in later times) was unknown to the Greeks of the heroic age. Besides the various motives, which naturally incline men to seek a new connexion or break off the old, the Athenian law created artificial causes of divorce. The heiress became the property of the next of kin. He, or she, or both of them, might be married at the time when the inheritance devolved upon her. In such a case the man was tempted to put away his wife, the woman might be obliged to leave her husband.

If a woman desired to obtain a divorce, and could not get her husband's consent, she went in person to the archon, and stated in writing the grounds of her application. Her right to a separation would depend on the treatment she received. Of the nature of this proceeding we know but little. It was the general duty of the archon to protect the interests of married women, and to take cognizance of all complaints against the husband for ill usage, for refusal to pay alimony to his wife, or to return her portion. He also kept a register of all divorces, whether made by consent or otherwise.

A mad freak is recorded of Alcibiades; that having by his ill treatment forced his wife Hipparete (daughter of Hipponicus) to leave his house and sue for a divorce, he seized her in the archon's presence, and dragged her home.

(1) δίκη ἀποπέμψεως.
(2) Einer für christliche Begriffe schrecklichen Gewohnheit. (Attic Process, 412.)

APPENDIX IV.

ONETOR'S CASE.

I HAVE shown elsewhere, that the successful party in an Athenian suit had not the assistance of a public officer, like our Sheriff, to levy execution; and that, if the sum awarded to him by judgment were not paid by the appointed time, he had to satisfy himself by taking personal possession of his adversary's goods or lands.[1] It is obvious that this course was attended with some disadvantages. In the first place, there was not the same security for the preservation of the public peace, as where the process of the law is executed by its known officer; and in the next place, the remedy of the creditor, in case of resistance or dispute, was not quite so speedy.

We are not however to suppose, because the creditor in levying execution was not aided by any officers of the law, that resistance to an execution commonly or frequently led to acts of outrage or violence. That this sometimes happened, we may take for granted;[2] it would be strange if it had not; but, that in the ordinary course of things it was otherwise, may be with some certainty gathered from what we read in the Attic orators and elsewhere. The Athenians, in the settled times of the republic, were a people accustomed to obey the law, and to observe its outward forms and processes. Dishonest men would endeavour to evade or defeat the law by artful shifts and contrivances, but seldom dared to infringe it openly. Fraud was common enough; violence not so. The course of things upon an execution was the same as in taking possession of property upon any other occasion. If a man desired to assert his title, say, to a piece of land, (whether his title accrued by inheritance, or by purchase, or in any other way), and if he had reason to think that it would be disputed, he made a formal entry upon the land, and thereby became *seised*, or possessed of it. If the adverse claimant came then to disturb his possession, he might bring against him an action of ejectment: but, before entry, he was not in a condition to bring such action. The supposed ejectment however was (in general) a mere formality. The opponent, upon entry being made, turned him off, either by gently laying hands upon him, or by commanding him to leave. All this took place quietly, and in the presence of witnesses. The party who turned the other off the land became a trespasser in the eye of the law, and liable to the action, which was brought to try the title.[3]

(1) Vol. III. Appendix ix. page 391.
(2) See the Oration against Apaturius, ante page 162.
(3) This was the ἐξούλης δίκη. See Meier and Schömann, Att. Proc. 371. 748—752.

This was precisely what occurred in the case of Demosthenes. He made entry upon the farm of Aphobus, which he had a right to take in execution. Onetor, claiming it as mortgagee, comes and orders him off, or turns him off, and thereby subjects himself to an action of ejectment. There is no actual force used. Demosthenes indeed says, that Onetor did it *in an insulting manner*.[1] This was perhaps an exaggeration on the part of the orator; but, whether so or not, he does not pretend to charge Onetor with the exercise of any violence. It was nothing but the formal act of ejectment.

It was the same in the case of personal property. We have an example in the speech written by Demosthenes for his uncle Demon, in an action brought against him by Zenothemis. The case was this. Zenothemis claimed a cargo of corn, which one Protus, an agent of Demon, had imported. Upon his proceeding to enforce his claim by taking possession, Protus goes to remove him. Zenothemis will not give up possession to Protus, but insists that Demon shall join in the removal; his object being, that he may acquire a cause of action against Demon as well as against Protus, probably because he regarded Demon as the more responsible person of the two. Demon, desiring to retain possession of the corn, consents to join in the trespass, goes through the required formality of laying hands upon Zenothemis, and thus subjects himself to the action, which Zenothemis afterwards brings against him; in which, the formal trespass being admitted, the title to the corn is the substantial question in dispute.[2]

These formalities were a relic of ruder times, when people used to assert their rights with violence, and the complaint of the injured party was founded upon a real and not a supposed trespass. Lawyers preserved the form when the reality no longer existed, and even considered the form necessary as a foundation for legal proceedings. It is interesting and instructive to observe, how the same sort of practices have prevailed in different countries, as if the one had borrowed them from the other, or as if the attachment of lawyers to unnecessary forms were the same all the world over. I shall mention a few examples by way of illustration.

At Rome in the early times, if the title to land were in dispute, the claimant summoned his adversary by the words "ex jure te manum consertum voco," to go with him to the land, and turn him off in the presence of the Prætor and others; which ceremony was afterwards changed to the symbolical act of breaking a clod of earth upon the land, intimating that the person who broke it claimed the right of property.

In ancient times, no conveyance of lands was complete in this country without livery of seisin, or corporal delivery of possession;

(1) πάνυ ὑβριστικῶς ἐξεβλήθην. (864.) Afterwards he uses the more ordinary expression, ἐξήγαγέ με ἐκ τῆς γῆς. (865.)

(2) See ante, page 155, and see the argument of the speech.

and this was generally performed by the giving of a clod, or turf, or twig. Of such symbolical tradition there are plenty of examples in other countries. Thus among the Jews the evidence of a purchase is defined in the book of Ruth, ch. iv. 7, 8.

"Now this was the manner in former time in Israel concerning redeeming and concerning changing, for to confirm all things; a man plucked off his shoe, and gave it to his neighbour; and this was a testimony in Israel.

"Therefore the kinsman said unto Boaz: Buy it for thee. So he drew off his shoe."

The giving of the shoe to the purchaser signified that he had full right to walk and tread upon the land as his own.

Among the Goths and Swedes contracts for sale of lands were made in the presence of witnesses, who extended the cloak of the buyer, while the vendor cast a clod into it, and a staff or wand was delivered from the vendor to the vendee, which passed through the hands of the witnesses. Blackstone (Commentaries II. 313) notices a similar ceremony in the conveyance of our copyhold estates, from the seller to the lord or his steward, by the delivery of a rod or verge, and then from the lord to the purchaser, by the re-delivery of the same, in the presence of a jury of tenants.

In England the heir of land did not get complete ownership, till he had made actual entry; and a lessee was obliged to enter, in order to become a complete tenant. And if a man was disseised, or ousted from possession, his remedy was to make entry upon the land, declaring that he thereby took possession; which entry restored him to his seisin and ownership, and thereby to the capacity of conveying it from himself by purchase or transmitting it by descent. It was sufficient however to enter into a part of the lands in the name of the whole, in the case of lands lying all in one county. If the disseised party was prevented from making a peaceable entry by menaces or bodily fear, he might make claim, going as near to the land as he could, with the like forms and solemnities; which claim continued in force for a year and a day.

One of the most remarkable instances of legal fiction is the process in the English action of ejectment, which continued for many centuries to be the regular mode of trying the title to land. The claimant (say Joseph Smith) pretended to have granted a lease to one John Doe, who pretended to have made an entry on the land, and to have been ousted, or turned off, by one Richard Roe, against whom he commenced an action for the trespass. Richard Roe sent notice of this, with a copy of the declaration, to the real tenant, (say William Rogers), advising him to appear to the action and defend his title. The service of this notice on Rogers was the first real proceeding in the case. Rogers then applied to be made defendant in the place of Richard Roe, which he was allowed to do, on condition of his confessing the series of legal fictions above mentioned, (the lease, the

entry, and the ouster,) and consenting to go to trial upon the real question. Such consent being given, the action proceeded under the name of "Doe on the demise of Smith against Rogers;" and, proof of the mere formalities being dispensed with, the only question to be tried was, whether Smith could make out a good title against Rogers, or the landlord of Rogers. The object of this contrivance was to supersede the cumbrous machinery of real actions, the more ancient method of trying titles to land. All this however has been recently abolished, and a simpler method of bringing actions of ejectment has been substituted.

I shall lastly refer to two other fictions, which until a recent period were necessary in the commencement of actions in two of our English courts; one of which will be found to resemble this fiction of the Athenian law.

Anciently the court of King's Bench had not cognizance of actions of debt or any purely civil actions. In order to acquire it, the Judges allowed a defendant to be brought into court upon a pretended charge of trespass, over which the court always had jurisdiction. The bill or process, by which he was brought in, alleged that he was in custody of the marshal upon a supposed arrest; this assertion the defendant was not allowed to dispute; and being in such custody, the plaintiff was allowed to proceed against him for any other cause of action of a personal nature. Thus the court of King's Bench enlarged their criminal jurisdiction to a civil one.

In a similar way the court of Exchequer, which formerly only entertained causes concerning the royal revenue, invented a process by which it acquired the right to try ordinary civil actions. It had always been held, that the king's debtors, farmers and accomptants of the Exchequer, were privileged to sue other parties in that court; and so the form of a writ was devised, in which the plaintiff pretended that he was a debtor to the king, and that the withholding of his debt or damages from him by the defendant prevented him from discharging his debt to the royal treasury. The writ was called a writ of *quo minus*, because it alleged in Latin, "that the defendant had done the plaintiff an injury, by which he was the less able to pay his debt to the king:" "*quo minus sufficiens existit, &c.*" This surmise, like that in the other court, the defendant was not at liberty to contest; and down to the reign of William IV. it continued to be a necessary part of the process in a civil action, and indeed the foundation of the proceeding. Blackstone and other English lawyers have boasted of these ingenious devices, and referred complacently to the maxim—"in fictione juris consistit æquitas."

In this case of Onetor the real question for the jury to try was, whether Aphobus had mortgaged his land *bonâ fide*, or whether it was merely a colourable and collusive contrivance. Onetor alleged in proof of its validity, that the mortgage was given before Demosthenes recovered his judgment. Had it been given after, probably it would

have been bad in law altogether; but the fact of its being regular in point of form and other external matters would not render the transaction valid, if it was designed for a fraudulent purpose, viz. to defeat the rights of a third party. Demosthenes answers Onetor by saying —"True, you took the mortgage before my judgment, but you took it under the expectation that I should recover judgment, and in order to prevent my levying execution." And if this was so, the transaction, as against Demosthenes, was a mere nullity.

The same tricks are played in modern times that were played two thousand years ago; and similar questions are tried in our English courts, and brought to trial in a manner not very dissimilar. The sheriff, levying an execution for A against B, receives a notice from C, that the property seized belongs to him, alleging that it has been transferred or mortgaged to him by bill of sale. If the Sheriff disregards the notice and proceeds with the execution, the claimant C brings an action against him: but if he wishes to relieve himself, as he generally does, and leave the battle to be fought out between A and C, he obtains an order of interpleader, directing an issue to be tried between those parties, to determine whether the title of C is good against A. Here the same question frequently arises as between Demosthenes and Onetor; whether the alleged bill of sale is not all a pretence, whether C is not a friend of B, lending his name for the purpose of defrauding A. If that be the case, the bill of sale is mere waste paper. The way to get at the truth is, by inquiring into the circumstances of the alleged transfer, the relation of the parties to each other, the consideration given, &c. &c.

The consequence of a verdict for the plaintiff in such a case as this of Onetor was, in the first place, that the property was adjudged to the plaintiff, and secondly, that the defendant was condemned to pay to the public treasury a sum equal to the value of the property. This was the means by which the plaintiff ultimately got the fruits of his judgment. For the defendant became a state-debtor, and was thereby disfranchised, and might in course of time become liable to imprisonment, as we have already seen. I incline to Schömann's opinion, that the state did not discharge the defendant from the public debt, unless he also satisfied the plaintiff by giving up to him the property in question or paying him his damages.

The Athenians, for an ordinary mortgage of real property, appear not to have used deeds or writings. The only evidence of the hypothecation were these ὅροι, or tablets, of which mention is frequently made in Demosthenes. They were stone tablets, or marble slabs, (*steinerne Tafeln* Meier calls them,) which were set up on the boundaries of the land, or on some conspicuous part of the house, as over the door or on the wall, with an inscription, stating that the land or house was mortgaged to such and such a person for so much money. The name of the Archon, in whose year of office the security was given, was always mentioned. Böckh has published two inscrip-

tions upon two several stones of this kind. One, which was found at Acharnæ, denotes that the mortgage was given in the Archonship of Theophrastus for the unpaid purchase-money of land sold by Phanostratus of Pæania.[1] The other, found at Marathon, which is imperfect, states that a house and land had been given to secure the orphan son of Diogiton of Probalinthus.[2] Meier mentions an unpublished inscription, of a lease for forty years given by the townsmen of Aixone to one Autocles, in which the lessors stipulate that, in case the rent is in arrear, the produce of the land shall be mortgaged to them, and they shall be at liberty to put up stones, two on each side of the land, not less than three feet high.[3]

That these stones or tablets were a very ancient usage at Athens, may be learned from Plutarch, who informs us that, when Solon established his famous disburthening ordinance,[4] he removed the *ὅροι* which were set up in all parts of the country on the lands of the small proprietors, as the evidences of their obligations to the more wealthy class. It is plain that they were adapted to a rude age, when writing materials were scarce, and transfers of land were accompanied by delivery of possession, or something of the sort, to make them notorious. They could be of little use however, except in a small community, where the creditor might constantly have them before his eye. Without such opportunity of inspection, there would be nothing to prevent a fraudulent debtor from removing them, and mortgaging his land over again. One may be a little surprised at Reiske's note—"Mos hic apud nos quoque si obtineret, *quem optandum erat obtinere,* quam multos ejusmodi *ὅρους* esset videre!" One would have thought Reiske might have learned from Demosthenes, that pillars are as easily removed as they are put up. It is still more strange however to find Blackstone expressing himself in the same strain, and lamenting that we cannot return to the old times when land was transferred to the mortgagee in the presence of the neighbours: he writes thus, (Commentaries, II. page 159:)

"In Glanvil's time, when the universal method of conveyance was by livery of seisin or corporal tradition of the lands, no gage or pledge of lands was good unless possession was also delivered to the creditor: 'si non sequatur ipsius vadii traditio, curia domini regis hujusmodi privatas conventiones tueri non solet:' for which the reason given is, to prevent subsequent and fraudulent pledges of the land;

(1) Ἐπὶ Θεοφράστου ἄρχοντος ὅρος χωρίου τίμης ἐνοφειλομένης Φανοστράτῳ Παιανιεῖ δισχιλίων δραχμῶν.

(2) ὅρος χωρίου καὶ οἰκίας ἀποτίμημα παιδὶ ὀρφανῷ Διογείτονος Προβαλισίου.

(3) ὅρους ἐπὶ τῷ χωρίῳ μὴ ἔλαττον ἢ τρίποδας ἑκατέρωθεν δύο. (Meier and Schömann, Att. Proc. 506. 530.)

(4) σεισάχθεια. The exact nature of this measure is uncertain. It was probably an arrangement for a reduction of the debts of the poorer class, not a total abolition of them, as some have supposed. Whether this was effected by a direct cancelling of a portion of the debt, or by a depreciation of the currency, has been a matter of dispute. See Plutarch, Vit. Solon. 15.

'cum in tali casu possit eadem res pluribus aliis creditoribus tum prius tum posterius invadiari.' And the frauds which have arisen since the exchange of these public and notorious conveyances for more private and secret bargains have well evinced the wisdom of our ancient law."

Things are much changed since the time of Glanvil, who wrote in the reign of Henry II. I need hardly say, that livery of seisin and corporal tradition would not be notorious at the present day. A man's neighbours make but a small part of the world he lives in, and they do not pay much attention to his transfers or his mortgages. Assuredly we shall never go back to livery of seisin, or notices upon the land, or any contrivance of that sort. In our country title deeds are the evidence of property in land, and no cautious creditor will accept a mortgage, unless all the title deeds in the mortgagor's possession are delivered to him. That difficulties frequently occur in the investigation of the title to real property, and that frauds are occasionally committed, we all know; to prevent which it has often been proposed, and many attempts have been made, to establish a public register of title. But this is a subject fraught with difficulty, and upon which there is a great difference of opinion. Here I can do no more than glance at it.

The name of *ὅροι* was probably given to these stones, because they were fixed on the boundaries, and thus denoted the extent of land which was subject to the mortgage. It once occurred to me, that the term might be used to designate the interests of the parties concerned, in the same way as we use the words *limit* and *limitation* in our law. For example we say "an estate *limited* to A B for life, with remainder to his son in fee" But there is no authority for such a supposition with respect to the Attic term; and it is altogether more probable that it had reference to a terminal boundary.

APPENDIX V.

SHIPPING CONTRACTS.

The importance of foreign commerce to the Athenians rendered it necessary for them to enact various laws for its regulation, and for the protection of those engaged in it. Of the numerous commodities which they imported—as corn, wine, salt-fish, hides, leather, wool, timber, wax, tar, linen, carpets, gold, copper, iron, slaves, &c.—some were necessary to their existence, or at least to their prosperity, others were articles of luxury and comfort, which habit had rendered almost indispensable. These they were enabled to procure, directly

or indirectly, in exchange for the native produce or manufactures of their own country, namely, oil, honey, olives, figs, marble, silver, lead, works of art in wood and metal, articles of furniture and dress, armour, hardware, earthenware, jewellery, &c.

It was by means of individual enterprise, as now, that this commerce was carried on. It was both just and politic, that the capitalists and other people who embarked in it should be encouraged, their rights secured, their contracts duly enforced. That such was the policy of the Athenian law, we are frequently informed by Demosthenes. I may instance in particular what he says at the close of the speech against Phormio, (ante, 184, 185;) from which we learn that frauds practised upon those who lent money on mercantile adventures might be punished with the utmost severity. The establishment of special tribunals for the speedy trial of mercantile causes was, as I have shown, that merchants might not be impeded in their business by legal delays. (See the Argument to the speech against Zenothemis, ante, 150.)

The manner in which maritime commerce was carried on by the ancient Athenians differed from that of modern times in some important respects.

With us, a trading ship is employed in two different ways. In the one case—the ship, or the principal part thereof, is let by the owners for some particular voyage; this is usually done by an agreement under seal, called a *charter-party*, and the ship is said to be *chartered*. In the other case—the owners of a ship destined to make a particular voyage engage with various persons, unconnected with each other, to convey their respective goods to the place of destination; a ship thus employed is called a *general* ship. The owners rarely navigate the ship themselves, but leave the management of it to the master, by whose lawful contracts during the time of his employment they are held to be bound. When the goods are put on board, the master gives an acknowledgment called a bill of lading, by which he undertakes to deliver them to the party therein named or to his assignee. A duplicate of this, signed by the master, is sent by the shipper to his consignee abroad; to whom, on its production, the goods are to be delivered. The merchant himself rarely goes on the voyage, though sometimes he sends out a supercargo to protect his interests.

Such are the general features of a trading voyage in modern times. The character of the whole business however is much altered by the practice of insurance, which was unknown to the ancients.[1]

(1) "In the middle ages"—says Park, in his treatise on marine insurance—"almost all the commerce of Europe centred amongst the Italians. As they at that time carried on and established a regular trade with the East in the ports of Egypt, and drew from thence all the rich produce of India; it is reasonable to suppose, that in order to support so extensive a commerce, these industrious and ingenious people were the first who introduced insurances into the system of mercantile affairs. It is true, there is no direct authority to warrant a positive assertion, that they were the inventors of this kind of contract: but it is certain, that the knowledge of it came with them into the different maritime states, in which parties

At Athens the system was different. There were usually the following parties to a trading voyage:—1. The shipowner; 2. The merchant adventurers; 3. The capitalists, who lent money to those respective parties on the security of the ship, freight, and goods. The owner of the ship was often obliged to borrow money for his outfit and navigation; for this he mortgaged the ship and freight. The merchant adventurer was usually a person who had little or no capital, who purchased the outward cargo with borrowed money, went out with it to sea, sold it at the place of destination, and then procured a return cargo which he brought home. The capitalist, who supplied the fund for this, was commonly a banker, or some person acquainted with the nature of the trade, who found it advantageous to employ a portion of his spare money in this way, on account of the high rate of the profit which it yielded.

Such appears to have been the ordinary course of things. But that this was sometimes varied—and that the relations of the parties did not always stand exactly on the same footing—we may readily imagine. For example—the shipowner might carry merchandise on his own account; or the merchant might trade with his own money, either wholly or in part.

Let me illustrate what I have said by reference to the cases in this present volume. First take that of Zenothemis. We have Hegestratus, the shipowner, who is alleged to have borrowed money on a pretended security of goods; the ship and freight having probably been pledged before. Zenothemis and Protus are merchant adventurers, trading with borrowed money, and going out on the voyage. Demon and his partners and the Syracusan creditors are the capitalists who find the funds for these persons.

In the case of Apaturius, the defendant tells us, that for a considerable time he was engaged in foreign commerce and used himself to make voyages; that, having saved some money, he gave up going to sea, but lent his capital to other merchants. Here we have the merchant adventurer, who had been successful in trade, retiring from the personal risk and toil of a seafaring life, and becoming a money-lender only. Compare what Nicobulus says of himself, (ante, 241, 242.)

of them settled: and when it is admitted that they were the carriers, manufacturers, and bankers of Europe, it is probable that they also led the way to the establishment of a contract, which is so essentially necessary to the support and cultivation of commerce. It has however been asserted by the writers of the French nation, that insurance dates its origin in the year 1182, and that it was introduced by the Jews, who were banished from France about that period, and who took that method to facilitate and secure the removal of their effects. They proceed to say, that the Lombards, who were not idle spectators of this contrivance, adopted it, and in a short time improved it considerably. It is not very necessary to inquire into the truth of this fact, nor indeed are there materials to enable us to do so: but it is observable that the President Montesquieu mentions that the Jews upon this occasion invented bills of exchange, but does not say a syllable of policies of insurance. It is agreed, however, that, if the Lombards were not the inventors, they were at least the first who brought the contract of insurance to perfection, and introduced it to the world."

The premium upon money lent on a maritime adventure was necessarily high, on account of the risk run by the lender. There was, in the first place, the hazard of losses by sea, including shipwreck and damage by tempest, capture or detention by enemies or pirates, &c. &c.; and the rule was, that the lender was not entitled to payment, if the ship or cargo was lost. In addition to this, the personal credit of the merchants, especially if they were foreigners, was very low; and the security which they offered could not be much relied upon, for it was, from necessity, in great measure withdrawn from the control of the lenders. (See the observations in the plaintiff's opening of the speech against Dionysodorus.)

Even when the ship was mortgaged, if the owner went out with it, there could be no certainty that he would return; and international law afforded but little protection in those days. The cargo was a still more precarious security, for it was exposed to more casualties. There were two ways of lending; either on the voyage out, or on the voyage out and home. In the former case, the loan was repayable on the ship's reaching its outward place of destination, and the creditor had an agent on board, or in the foreign port, to receive it. In the latter case, the creditor was entitled to receive payment upon a safe return to the port where he had lent his money.

A loan upon the voyage out was evidently attended with less hazard. The lender took care that the goods which constituted his security were duly shipped. On their arrival at the port of destination, his agent was entitled to hold or have control over them till they were sold, and then to receive what was due to him out of the proceeds.

Upon a loan on the voyage out and home, the creditor had likewise to see that the outward cargo of goods was put on board; for, though he had no control over them, it was by their sale in the foreign port that the merchant was enabled to purchase the return cargo, which, upon its safe arrival home, formed the real security of the creditor; for then he was entitled to the possession of it, until his principal and interest were repaid. This risk was augmented, not only by the double sea-voyage, but by the larger credit and greater power given to the merchant; consequently he demanded a higher rate of interest. Chrysippus, we have seen, was to receive from Phormio upon such a loan thirty per cent. (ante, 170). Androcles and Nausicrates were to have in one event twenty-two and a half per cent., and in another thirty per cent. (ante, 185). But this was virtually interest on the half-year.

In every case it seems to have been stipulated, that the merchant should not give a second mortgage on the same goods. If he did, it was considered a fraud upon the first as well as the second mortgagee; and indeed with good reason. For, though we may presume that the first mortgagee would have priority, yet the repledging of his security might very possibly involve him in trouble

or litigation; and, by increasing the debtor's liabilities, it might cripple his means of payment, and lead him into temptation to commit fraud.

The rate of interest upon these maritime loans was not restricted by law; nor were commercial enterprises greatly harassed by legislative interference. Protective duties were unknown at Athens. A duty of two per cent., imposed for the sake of the revenue, was levied upon all exports and imports; and no trade was altogether prohibited, except with those people, who were either at war, or in a state of permanent enmity, with the Athenians. The few restrictive regulations, by which Athenian commerce was fettered, were with a view to secure to the country a supply of the principal necessaries of life, especially corn.

The population of Attica, including both freemen and slaves, was not less than half a million. Of the corn necessary for their consumption two-thirds only were supplied by Attica itself; the rest was brought from foreign countries, chiefly from the coast of the Euxine, the Crimea, the Thracian Chersonese, Syria, Egypt, Sicily, Eubœa. Every precaution was taken both by the government and the legislature to secure an abundant supply; and among other measures which they adopted were the following. The exportation of corn from Attica was entirely prohibited by law. No man resident in Athens was allowed to convey corn to any other port than the Athenian, as we have already seen, (ante, p. 181.) And two-thirds of the corn imported was to be brought into the city of Athens and sold there. With respect to the laws against engrossing and regrating and the frauds and tricks of the corn-dealers, I shall content myself with referring to article *Σῖτος* in the Archæological Dictionary, and to the copious discussion of Böckh. I must however draw the reader's attention here to the commercial law cited in the speech against Lacritus, (ante, p. 200;) in which there is a difficulty (as I have already noticed) in construing one of the clauses, and of which the general meaning is by no means free from obscurity.

The words of the original are:—

ἀργύριον δὲ μὴ ἐξεῖναι ἐκδοῦναι Ἀθηναίων καὶ τῶν μετοίκων τῶν Ἀθήνῃσι μετοικούντων μηδενὶ, μηδὲ ὧν οὗτοι κύριοί εἰσιν, εἰς ναῦν ἥτις ἂν μὴ μέλλῃ ἄξειν σῖτον Ἀθήναζε, καὶ τἆλλα τὰ γεγραμμένα περὶ ἑκάστου αὐτῶν. ἐὰν δέ τις ἐκδῷ παρὰ ταῦτ᾽, εἶναι τὴν φάσιν καὶ τὴν ἀπογραφὴν τοῦ ἀργυρίου πρὸς τοὺς ἐπιμελητὰς, καθὰ περὶ τῆς νεὼς καὶ τοῦ σίτου εἴρηται, κατὰ ταῦτα. καὶ δίκη αὐτῷ μὴ ἔστω περὶ τοῦ ἀργυρίου, ὃ ἂν ἐκδῷ ἄλλοσέ ποι ἢ Ἀθήναζε· μηδὲ ἀρχὴ εἰσαγέτω περὶ τούτων μηδεμία.

Böckh's interpretation of this passage is, that no one was allowed to lend money on a vessel which did not return to Athens with a cargo of corn or other commodities. He refutes the opinion of Salmasius, that the law related to the corn trade only, and so far we must agree with him; for the words *καὶ τἆλλα τὰ γεγραμμένα περ.*

ἑκάστοι αὐτῶν, however we interpret them, clearly indicate some other merchantable articles besides corn, as being enumerated either in the law itself, or in the agreement of loan; and further, it appears even from the case of Lacritus, that it was not necessary for every ship to bring corn, as part of its return cargo, to Athens. But, says Böckh, it was required by law, to make a loan on the voyage legal, that the ship should bring either corn or some other commodity to Athens. It appears to me, (with all due deference to so high an authority,) that there are difficulties in the way of this explanation.

Böckh concedes, as he was obliged to do, that a loan on the voyage out was legal; but, to reconcile this with his interpretation of the law, he contends that such a loan was not legal, unless the ship was to return to Athens with such a cargo as the law required. Was it necessary then, that in every agreement for a loan on the voyage out a stipulation should be inserted, binding the merchant to bring back the requisite cargo to Athens? Supposing this to be so, what security would it be to the Athenian state? If the lender was to be absolved from all penal consequences, merely by inserting such a clause, it would always be inserted, and it would have no effect whatever. On the other hand, if the lender was bound to go further, and to be answerable for the *bona fides*, or for the acts, of the merchant and the shipowner, it would have been a terrible hardship on him; for why should he be implicated in their proceedings, after the discharge of the outward cargo on which he had lent his money? If this had been the case, it would never indeed have been safe to lend money on the voyage out. Yet we know for certain, that it was a common practice to do so.

Again—the law does not specify what amount of corn or other commodities were to be brought to Athens. How large a cargo then would have satisfied the law? If the smallest possible would have been sufficient, then the statute would easily have been evaded; if a substantial cargo was required, such a construction of the statute would have led to oppression and injustice; for how could it be determined what was a substantial cargo? The question, whether there had been a breach of law, must have depended on the state of the foreign market, the fortune of the voyage, and many other chances. Such are the absurdities in which this theory of the matter appears to involve us. If the law had simply provided, that no man should lend on a ship which was not to return to Athens, it would at least have been intelligible; but this does not agree with the words.

I may add, that the supposed regulation would have been by no means conducive to what the Athenians desired to accomplish, viz. to secure a plentiful importation of corn and other provisions. For example, there is a trade in corn from Syracuse to Athens. If, after the arrival of a Syracusan corn-ship at Athens, an Athenian was prevented from lending on the voyage back to Syracuse, the importation

of corn to Athens would have been discouraged. A voyage from Athens to Syracuse and back was perfectly legitimate, that is conceded. Nor was there any objection to lending on a voyage from Syracuse to Athens, as appears from the speech against Dionysodorus, (p. 1286.) Why then should there be a prohibition against lending on a voyage to Syracuse?

Now let us consider the latter words of the statute—*καὶ δίκη αὐτῷ μὴ ἔστω περὶ τοῦ ἀργυρίου, ὃ ἂν ἐκδῷ ἄλλοσέ ποι ἢ Ἀθήναζε.* These words, standing alone, would seem to prohibit the lending on a voyage out, which we know cannot be their meaning. They do not imply any command to bring a cargo to Athens; they are simply prohibitory. But it is clear that they are to be taken in connexion with the previous clauses of the statute; and this leads perhaps to a solution of the difficulty. The substance of what the statute enacted may be as follows—" No man shall lend money for the carriage of corn elsewhere than to Athens, *nor for the carriage of any return cargo elsewhere than to Athens;* if he does, he shall be liable to a Phasis, &c., and he shall have no action to recover his money." The words in Italics contain the substance of what was omitted by the orator, and in lieu of which are inserted the hopelessly obscure words *καὶ τἄλλα* &c. How then do I understand the law? How do I make it reconcileable with the admitted legality of loans on the voyage out? This is already indicated by the above paraphrase of the law, but I will make it yet plainer. It was not lawful to lend money on a cargo *shipped in a foreign port on return*, unless that cargo was to be carried to Athens. For example—it was lawful to lend on a voyage from Athens to Bosporus: it was lawful also to lend on a return cargo to be brought from Bosporus to Athens: but it was not lawful to lend on a return cargo to be shipped in Bosporus and carried to Chios. This we know from the speech against Lacritus; and it agrees with what the speaker says in the case of Dionysodorus. The plaintiffs there lent money to the defendants on a voyage from Athens to Egypt and back. They had been requested to lend on the voyage to Egypt, and thence to Rhodes or Athens; but this they had refused, apparently because it was illegal. The borrowers violated their contract, carried a cargo of corn from Egypt to Rhodes, and did not bring the ship back to Athens, as they were bound to do under a penalty; for which an action was brought in the Athenian court.

This view of the matter is confirmed by what is said in the speech against Zenothemis about the mercantile actions, (ante, p. 151, orig. 882;)—*οἱ νόμοι κελεύουσι τὰς δίκας εἶναι τοῖς ναυκλήροις καὶ τοῖς ἐμπόροις τῶν Ἀθήναζε καὶ τῶν Ἀθήνηθεν συμβολαίων*—which I take to be the same in substance with what is said in the speech against Phormio, (ante, 172, 183, orig. 908, 919.) Loans were good, on voyages *direct* from Athens; but a loan on goods from Egypt to Rhodes was not *direct* from Athens.

And there was a reason for the law as thus explained. For the lending on a return cargo from one foreign port to another, besides that it tended to diminish the importation of necessary commodities to Athens, brought no customs duty to the state. On goods carried from Athens to Egypt there was an export duty; on goods from Egypt to Athens there was an import duty; on goods from Egypt to Rhodes there was neither.

I now proceed to examine more in detail the terms of these maritime loans.

In the cases of Zenothemis, Phormio, and Dionysodorus, the principal features of the agreements may be gathered from a perusal of the speeches. In the case of Lacritus we have an agreement set out in full; and this therefore will afford the best example for illustration.

It occurs in page 189 of this translation. The clauses which I have here particularly to notice are—I. Those prescribing the course of navigation and rate of interest: II. Those relating to the security: III. Those which allow a deduction from the payment in certain cases: IV. Those which provide for the event of the ship or cargo being lost.

I. The voyage is to be from Mende or Scione, and thence to the Thracian Bosporus, with liberty to sail on the left coast of the Euxine as far as the mouth of the Borysthenes. The merchants are to pay interest of twenty-two and a half per cent. on the loan, unless in the event of their returning from the Euxine to Hierum in Bithynia after the rise of Arcturus in September, when the dangers of navigation commenced; then, in consequence of the increased risk, they were to pay thirty per cent. In the event of their not entering the Euxine, in order to escape the tempests of the dog-days, they were to remain in the Hellespont, at the end of July, ten days after the early rise of the dog-star, paying in that case the lower rate of interest. And none of the goods are to be unladed in any port where the Athenians are in a state of hostility with the natives.

Here we have a particular route prescribed for the voyage, with liberty to vary it to some extent, subject to the payment of a higher premium in case the peril is increased. There is a prohibition, as we might expect, against unlading in an enemy's country. No penalty is expressly imposed for a violation of these terms; but we may fairly presume that an infringement of them would be attended with legal consequences, such as an action for any damage sustained by the breach of contract, or forfeiture of the benefit, which the saving clauses gave to the merchant in case of a loss. It is impossible to speak with certainty upon such a question, as we have so few cases handed down to us, and we cannot sustain every point of law which suggests itself by reference to a precedent. The analogies of modern law will be found most useful to explain and illustrate a subject of

this nature; there being a great similarity between the commercial laws of all nations.

In these days, when the place of destination is fixed by the charter-party, it is the duty of the master to proceed to it without delay, and without stopping at any intermediate port, or deviating from the straight and shortest course, unless such stopping or deviation be necessary to repair the ship from the effects of accident or tempest, or to avoid enemies or pirates, or unless the ship sails to the places resorted to in long voyages for a supply of water or provisions by common and established usage.

A deviation, without necessity or reasonable cause, from the regular and usual course of the voyage, has an important effect upon contracts of insurance. It is necessary to insert in every policy of insurance the place of the ship's departure, and also of her destination. Hence it is an implied condition to be performed on the part of the insured, that the ship shall pursue the most direct course, of which the nature of things will permit, to arrive at the destined port. If this be not done; if there be no special agreement to allow the ship to go to certain places out of the usual track, or if there be no just cause assigned for such a deviation, the underwriter (or insurer) is no longer bound by his contract, the insured having failed to comply with the terms on which the policy was made. For, if the voyage be changed after the departure of the ship, it becomes a different voyage, and not that, against which the insurer has undertaken to indemnify: the risk may be ten times greater, which probably the insurer would not have run at all, or, at least, would not have run without a larger premium. Nor is it material, whether the loss be or be not an actual consequence of the deviation; for the insurers are in no case answerable for a subsequent loss, in whatever place it happen, or to whatever cause it may be attributed. Neither does it make any difference, whether the insured was, or was not, consenting to the deviation.

These are principles, founded upon the exigencies of commerce, which have been fully established in our English courts.

II. As to the security. The money is stated in the agreement to have been lent on the security of 3,000 casks of Mendean wine. The expression is remarkable, because the wine was not to be put on board until the ship had arrived at Mende or Scione, and was afterwards to be sold in the Thracian Bosporus or the Euxine, and a return cargo purchased with the proceeds. If the lenders had any control over the wine by means of an agent of their own, it would have been a security in the stricter sense of the term; otherwise, it could be a security no further than this, that it formed a part of the contract that the borrowers should ship the cargo of wine; and, if they did so, it afforded them the means of procuring the return cargo, which constituted the effectual security of the lenders, if it was brought home safe; for then, by the terms of the agreement, it was to be

delivered entire to the lenders, and to be under their absolute control, until repayment of what was due to them. (See the observations in the note at page 172.) It does not appear that Androcles and Nausicrates, who lent their money to the brothers of Lacritus, either sent out an agent in the ship, or had one in any of the foreign ports. Hippias, who went out as supercargo, though he gives evidence for the plaintiffs, is not represented as having any connexion with them. It is reasonable indeed to suppose, that the capitalists who supplied funds to the merchants would sometimes repose confidence in the owner or master of the ship, or in some of the passengers or other parties going out, who, if they could not check or prevent fraud, would at least have the means of reporting and disclosing it. Thus, for example, Chrysippus and his brother in the first instance place reliance on Lampis, who gave them information concerning Phormio's breach of contract, though afterwards (as they say), he entered into a league with Phormio against them. Androcles and Nausicrates stipulate that the return cargo shall be brought home in the same ship that takes the outward cargo, the ship, namely, of Hyblesius, in whom, or in whose servants or connexions, they may have had reason to put trust. It is observable that the brother of Hyblesius, and the pilot, as well as the supercargo, give evidence for the plaintiffs.

With respect to the guarantee alleged to have been given by Lacritus on behalf of his brothers, there appears to be no evidence to support it. At the same time, it is likely enough that his position and presence in Athens operated as some inducement to give credit to his brothers. In the case of Dionysodorus, one of the borrowers remains at Athens, while the other goes to sea. A foreign merchant, who had neither family nor friends nor property in Athens, could have had very little personal credit, generally speaking.

We may further notice, that by express contract all the property of Artemo and Apollodorus, as well as the return cargo, is made liable for repayment of the loan, in the event of their security being found deficient; and the creditors are empowered to seize their property in execution, in the same manner as if a judgment had been recovered. This right however was subject to the clauses providing for abatement in certain events, and for the case of a total loss.

III. As to the proviso for deductions.

The agreement declares that no abatement shall be allowed, except for jettison, made by a common resolution of the passengers, or for payments made to enemies.

Jettison is the throwing overboard of a portion of the merchandize in the vessel, in order to lighten the vessel and preserve the rest of the cargo. The regulations respecting it have prevailed among maritime nations for many ages, and are founded on principles of natural equity. It happens usually in a storm. The heaviest or most cumbrous goods are thrown over, as a matter of necessity;

the merchant is obliged to submit to it for the common welfare, and is entitled to contribution from those who have reaped the benefit, in proportion to the value of the property which has been saved to them respectively. As the reader will get little or no information upon this subject from the ordinary writers on Attic law, and the subject is interesting and important, it is desirable to throw some light upon it by reference to the laws of other countries.

The contribution above mentioned, which is made by all parties towards a loss sustained by some for the common benefit, has in modern times been called by the name of "general average." The custom is said to have been derived from the laws of Rhodes, and was adopted in the Digest of Justinian, with an express recognition of its origin in the Rhodian law, though, as appears from this legal document produced by Demosthenes, the principle was not unknown to the Athenians. The principle has been recognized by most commercial codes, but with some variation in the practice.

The rule of the Rhodian law, which is said to have been introduced into England by William the Conqueror, is as follows:—If goods are thrown overboard in order to lighten the ship, the loss, incurred for the sake of all, shall be made good by the contribution of all. The goods must be *thrown* overboard. The mind and agency of man must be employed; if the goods are forced out of the ship by the violence of the waves, or are destroyed in the ship by lightning or tempest, the merchant alone must bear the loss. They must be thrown overboard *to lighten the ship;* if they were cast overboard by the wanton caprice of the crew or the passengers, *they*, or the masters and owners for them, must make good the loss. The goods must be thrown overboard *for the sake of all;* not because the ship is too heavily laden to prosecute an ordinary course through a tranquil sea, which would be the fault of those who had shipped or received the goods; but because at a moment of distress and danger their weight, or their presence, prevents the extraordinary exertions required for the general safety. When the ship is in danger of perishing from wind or tempest; or when a pirate or an enemy pursues, gains ground, and is ready to overtake; no measure, that may facilitate the motion and passage of the ship, can be injurious to any one, who is interested in the welfare of any part of the adventure, and every such measure *may be* beneficial to almost all. In such emergencies, therefore, it is lawful to have recourse to every mode of preservation, and to cast out the goods in order to lighten the ship, for the sake of all. But if the ship and the residue of the cargo be saved from the peril by the voluntary destruction or abandonment of part of the goods, equity requires that the safety of some should not be purchased at the expense of others, and therefore all must contribute to the loss.

Many foreign ordinances have prescribed certain forms to be adopted with reference to jettison; some of them have even named

the persons to be consulted before it takes place, and some have specified the sorts of goods that shall be first thrown over; and various minute rules have been laid down. It has justly been observed by Lord Tenterden in his treatise on the law concerning Merchant Ships and Seamen, that "Regulations prescribed by persons at ease in the closet or the senate house will seldom be followed at the moment when life or liberty is in jeopardy; at such a moment every one present will exclaim with the friend of Juvenal,

"Fundite quæ mea sunt, etiam pulcherrima."

And, if the jettison has been the effect of danger and the cause of safety, all writers agree that contribution ought to be made, although the forms have not been complied with. Previous deliberation, if there was time to deliberate, and a due choice of the heaviest and most cumbersome articles, may be proofs of the necessity and propriety of the act; but they are not the only proofs, and therefore are not to be deemed essential. It has been said also by the last mentioned writer, that in this case, as in many others, too close a compliance with forms, at a moment of supposed danger, may afford ground for a suspicion of fraud. In all cases, however, and in all countries, it has been required of the master that he draw up an account of the jettison, and verify it by the oath of himself and some of his crew, as soon as possible after his arrival at any port, that there may be no opportunity to purloin goods from the ship and then pretend that they were cast over in the time of peril.

Other goods which are damaged or destroyed, in order to accomplish the jettison, are to be included in the contribution; and also expenses incurred in relation to them, as where it has been necessary to unlade, repair, and reship. And the same rule extends to the ship, its tackle and furniture; as where the masts and cables are cut away to prevent shipwreck; or where the deck or sides have been cut to facilitate a jettison, or other extraordinary damage has been done, or expense incurred, with the same view.

The agreement in Demosthenes allows for jettison only where it has been made under a common resolution of all on board. This accords in some measure with the rule laid down by Beawes in his Lex Mercatoria, who says that in order to make the jettison legal three things must concur—

"First, that what is so condemned to destruction, be in consequence of a deliberate and voluntary consultation held between the master and men.

"2ndly. That the ship be in distress, and that sacrificing a part be necessary in order to preserve the rest.

"3rdly. That the saving of the ship and cargo be actually owing to the means used with that sole view."

Of these the first and third conditions are not imperative in our law, but only the second.

It appears also that, by the laws of Wisbuy,[1] in an emergency of such a nature as to justify the lightening of the ship, it was necessary first to consult the owner of the goods or the supercargo; but, if they would not consent, the merchandize might, notwithstanding their refusal, be ejected, if it appeared necessary to the rest of the people on board; a regulation evidently founded on necessity, to prevent a sordid individual from obstructing a measure so essential to the general safety.

If the jettison does not save the ship, but she perish in the storm, the rule is, that there shall be no contribution of such goods as may happen to be saved; because the object for which the goods were thrown overboard was not attained. But if the ship, being once preserved by such means, and continuing her course, should afterwards be lost, the property saved from the second accident shall contribute to the loss sustained by those whose goods were cast out on the occasion of the former peril.

With respect to insurance, the law is laid down by Roccus, to the effect that the insurers are liable to pay the insured for all expenses arising from general average, in proportion to the sums which they have underwritten; and in England the underwriter almost always

(1) "It would be improper to pass over the laws, which were ordained by an industrious and respectable body of people, who inhabited the city of Wisbuy, famous for its commerce, and renowned on the shores of the Baltic. The merchants of this city carried on so extensive a trade, and gave themselves up so entirely to commerce, that they must doubtless have found a great inconvenience in having no maritime code, to which they could refer to decide their disputes. To such a cause we are probably indebted for those laws and marine ordinances, which bear the name of Wisbuy, which were received by the Swedes, at the time they were composed, as a just and equitable rule of action, and which were long respected and observed by the Germans, Swedes, Danes, and all the Northern nations; although the city in which they received their origin has dwindled into insignificance. At what time these laws were compiled is a matter of dispute. The writers of the North pretend that Wisbuy was a great commercial city in the ninth century; from whence they argue, that their laws must be of very high antiquity; that they were the model from which those of Oleron were copied, and that they were received and acknowledged by all nations in Europe, even to the Straits of Gibraltar. On the other hand it is answered, and with much strength of reasoning, that the Northern code is a transcript from that of Oleron, although it contains several additions; for it has been shewn, that the laws of Oleron were promulgated by Richard the First about the close of the twelfth century, at which time, as appears by the report of a Swedish historian, the city of Wisbuy was not built, nor for near a century afterwards; that the inhabitants were merely strangers collected together from different parts, who, so far from having any power or influence over their neighbours, were not absolute masters of their own city. Besides, if their laws had been prior to those of Oleron, we should have found in the latter some regulations respecting insurances; because a copyist never would have omitted so material a branch of commercial legislation, the laws of Wisbuy having expressly mentioned insurances, and provided that, if the merchant obliged the master to insure the ship, the merchant shall be obliged to insure the master's life against the hazards of the sea.

"But, if the laws of Wisbuy were not prior to those of Oleron, yet it is much to their honour, and shews in what estimation they were held in the greatest part of Europe, that, after having for a long course of time enjoyed the highest authority in all the Northern tribunals for maritime affairs, they were thought worthy of being adopted as the basis of the ordinances of the Hanseatic league"—Park's Introduction to his treatise on Marine Insurance.

engages by express contract to indemnify against losses from general average.

How far the customs of the ancient Greeks, or at least the Athenians and those with whom they traded, resembled the customs of modern nations, with respect to this matter, it is impossible to declare with any certainty. We know that Androcles and Nausicrates agreed to make an allowance to Artemo and Apollodorus for any loss incurred by jettison, which should have been made by a resolution of all the passengers, meaning (I presume), a resolution passed by the majority. It may be asked—did this mean that an allowance was to be made for jettison of the borrowers' goods only, in case any of them were cast overboard; or does it presuppose a general average, so that the allowance would be for their lost goods, so far as they had not been indemnified by contribution, or for the share which they had contributed to the loss of any other persons? I can hardly doubt that there was this general average, or something equivalent to it. The fact, that a vote of the passengers was necessary to authorise a jettison, warrants the inference that there must have been some indemnity given to the persons whose goods were selected to be thrown over. The heaviest and most cumbrous goods would commonly be selected for that purpose: but it would be a monstrous injustice that the owner of such goods should be a victim for all the rest. It was the more necessary in those times that an equitable contribution should be resorted to, as the practice of insurance was unknown.

An allowance was also to be made under the Attic agreement for "payments made to enemies." This (I presume) would include all monies paid by way of ransom upon any capture or detention by enemies or pirates, and all compulsory payments made to enemies for liberty to proceed on the voyage or on any other account. Under modern ordinances it has been laid down, that, if part of the cargo be voluntarily, and without any fraud or cowardice, delivered up to a pirate or an enemy by way of ransom or composition, to induce him to spare the vessel and the residue of the cargo, or if a sum of money be paid by way of ransom, the value of what is saved must contribute to such loss; not so however, if the enemy or pirate, having overpowered the ship, select for himself such plunder as he chooses to take; for then it is not the price of safety to what remains. It has been said also that, if a ship has been carried into an enemy's port, and the crew remain on board to reclaim and take care of her, not only the charges of reclaiming her, but the wages and expenses of the ship's company shall be brought into general average. In England however ransom can rarely be made the subject of general average, for it was forbidden under a heavy penalty by a statute passed in the reign of George III., "unless in case of extreme necessity to be allowed by the Court of Admiralty," and all contracts for ransom contrary to the statute were declared void.

Capture by the enemy has been very commonly made the subject

of insurance in our own country, and the policy is expressed to include "all loss or damage by the arrests, restraints, and detainments of kings, princes, and people." The rights created between the parties by such a contract may be briefly stated:

The ship is to be considered as lost by the capture, though she be never condemned, nor carried into any port or fleet of the enemy, and the insurer must pay the value. If, after a condemnation, the owner recover or retake her, the insurer is in the same situation as if she had been retaken or recovered before condemnation. He runs the risk of the insured, and undertakes to indemnify; he must therefore bear the loss actually sustained, and can be liable to no more. If therefore, after condemnation, the owner recovers the ship in her complete condition, but has paid salvage, or been at any expense in getting her back, the insurer must make good the loss so actually sustained. No capture by the enemy can be so total a loss as to leave no possibility of recovery. If the owner himself should retake at any time, he will be entitled; and if an English ship retake the vessel captured, either before or after condemnation, the owner is entitled to restitution upon stated salvage. His chance does not, however, suspend the demand for a total loss upon the insurer; but justice is done by putting him in the place of the insured, in case of a recapture.

Questions arise sometimes, whether a capture was just, and whether a detention was of such a character as to come within the terms of the policy. It has been laid down that detentions or restraints "by people" mean acts by the ruling power of the country, such as an embargo, not any tumultuous seizure by a mob. And the insured forfeits his rights under the policy, if he navigates contrary to the laws of the country where he is detained; for a man is never allowed to take advantage of his own wrong.

IV. The money was to be repaid, if the goods were brought home safe.

Herein this agreement differs from those in the cases of Zenothemis and Phormio, where the ship's safe arrival was made a condition of repayment. We have here a special clause, that, even though the ship be lost, the cargo, if saved, shall enure to the benefit of the creditors. A difficulty occurs in the expression, *κοινὰ τοῖς δανείσασιν*. I have suggested in a note, that it might be intended to comprise those who had a claim for salvage; but I am bound to say, that this is an uncertain conjecture. Salvage is the compensation paid to those persons, by whose assistance a vessel or its cargo is rescued from some peril of the sea, or recovered after actual loss: as to which there are ordinances in all maritime codes, fixing the rate at which it should be paid, stating the circumstances and conditions under which it becomes due, adjusting the interests of various parties concerned, forbidding plunder and pillage in case of shipwreck, &c. &c.

The principle on which all the Athenian mercantile loans are based—viz. that the lender runs the hazard of the voyage, receiving a high premium if it turns out prosperously, and losing both principal and interest, if the ship or cargo is lost—deserves the reader's particular attention. I have adverted to the perilous character of the speculation in ancient times, when insurance was unknown; and from the examples in the Demosthenic speeches we learn the frauds to which the lenders were exposed. On the other hand, when we see that the merchant could afford to pay twenty or thirty per cent. for half a year's use of the money, we may conclude that the profits of trade must have been very considerable. Contracts on the same principle have been common in modern times, and have been held to be perfectly legal and conscientious, even in countries where there were severe laws against usury; for it was considered that such laws did not apply to adventures, where the lender risked the loss of his principal. In our own country it was not lawful, until very lately, to lend money at higher interest than five per cent. Upon an ordinary loan, for example, of 100*l.* by A. to B., where the money was to be repaid some time or other at all events, it was not lawful to receive a higher interest than the legal rate. But if he lent 100*l.* upon such a contract as this, which we are considering, he would not have been amenable to the statutes of usury. Contracts of this kind have been called contracts of *bottomry* or *respondentia;* of which I proceed to give a more particular account. I cannot do better than subjoin the definition given of these terms by Park in his treatise on Marine Insurance:

"The contract of *bottomry* is in the nature of a mortgage of a ship, when the owner of it borrows money to enable him to carry on the voyage, and pledges the keel or bottom of a ship, as a security for the repayment; and it is understood that, if the ship be lost, the lender also loses his whole money; but if it return in safety, then he shall receive back his principal, and also the premium or interest stipulated to be paid, however it may exceed the usual or legal rate of interest. When the ship and tackle are brought home, they are liable, as well as the person of the borrower, for the money lent. But when the loan is not made upon the vessel, but upon the goods and merchandize laden thereon, which, from their nature, must be sold or exchanged in the course of the voyage, then the borrower only is personally bound to answer the contract; who therefore in this case is said to take up money *at respondentia.* In this consists the difference between *bottomry* and *respondentia;* that the one is a loan upon the ship, the other upon the goods: in the former, the ship and tackle are liable, as well as the person of the borrower; in the latter, for the most part, recourse must be had to the person only of the borrower. Another observation is, that in a loan upon bottomry the lender runs no risk, though the goods should be lost: and upon respondentia the lender must be paid his principal and interest,

though the ship perish, provided the goods are safe. But in all other respects the contract of bottomry and that of respondentia are upon the same footing; the rules and decisions applicable to one, are applicable to both.

* * * * *

"These terms are also applied to another species of contract, which does not exactly fall within the description of either; namely, to a contract for the repayment of money, not upon the ships and goods only, but upon the mere hazard of the voyage itself, as if a man lend 1,000*l.* to a merchant, to be employed in a beneficial trade, with a condition to be repaid with extraordinary interest, in case a specific voyage named in the condition shall be safely performed; which agreement is sometimes called *fœnus nauticum,* or *usura maritima.*"

The contracts above mentioned, as the reader will perceive, closely resemble the *ναυτικὸν συμβόλαιον* of the Greeks. It was the opinion of the learned writer, whom I have quoted, that bottomry took its origin from the custom of permitting the master of a ship, when in a foreign country, to hypothecate the ship in order to raise money to refit. True it is, that such a permission has in modern times been found necessary for the carrying on of commerce advantageously; for, unless the master had such power in case of necessity, the ship might be lost, before he had time to obtain instructions from the owner, or, at least, the object of the voyage might be frustrated; and accordingly the laws of Oleron and the Hanse towns declare distinctly, that "the master being in a strange country, if necessity drive him to it, may take up money on bottomry, if he cannot get it without, and the owners shall bear the charge;" and other laws accord with these, confining the power of the master to foreign countries, where he cannot communicate with the owner in time. The contract itself however, whether made by the master abroad, or by the owners at home, is the same in character with these mentioned in Demosthenes, and was probably handed down from a very early period.

In those fragments of the famous sea laws of the Rhodians, which have been preserved and transmitted to our times, there are evident traces of this species of contract. In one section it is said, "that when masters of ships, who are proprietors of one-third of the lading, take up money for the voyage, whether for the outward or the homeward bound, or both, all transactions shall pass according to the writings drawn up between the master and lender, and the latter shall put a man on board the ship to take care of his loan." But in another place these laws speak more explicitly, and with a direct reference to the distinction between naval interest and that which is given for a land risk—"If masters or merchants borrow money for their voyages, the goods, freights, ships, and money, being free, they shall not make use of suretyship, unless there be some apparent

danger either of the sea or of pirates. And for the money so lent the borrowers shall pay naval interest." From these two quotations, little doubt can be entertained that the Rhodians used to borrow and lend upon the hazard of the voyage for an increased premium. It has been mentioned that the Rhodian laws in general were adopted by the Romans, and consequently that branch of them which relates to bottomry, amongst the rest; for you can hardly open a book upon the Roman law, but you meet with chapters, *de nautico fœnore, de nauticis usuris*, which plainly show that this contract was well known to the jurists of that distinguished nation. It was also called by them *pecunia trajectitia;* because it was given to the borrower to be employed by him in commerce upon and beyond the sea.

The temptations, to which a needy merchant was exposed under a bottomry contract, are obvious. He might take up loans far beyond the value of the articles pledged. When he had agreed to purchase and ship goods in a foreign port, he might put none on board, or some of trifling value only, and these he might contrive to sink or destroy. There might be a conspiracy between the merchant and the master or ship-owner, such as that of which Zenothemis and Hegestratus are accused, to sink the vessel and cheat the creditors. A multitude of frauds of a similar nature are practised in these days against underwriters and insurance companies, upon naval policies, and upon fire and life policies. A man insures his house and the goods which it contains against fire, greatly overrating their value, and then purposely sets them on fire. Life assurance, one of the most valuable institutions of modern times, has occasionally led not only to fraud but to murder. It is important to bear in mind, that misrepresentations by the parties effecting an insurance, irrespective of any criminal or fraudulent intention, will generally vitiate the policy. The frauds committed against insurers and lenders on bottomry fell under the notice of the English legislature in the reign of Charles II., and a statute was passed for their repression, which has been followed by others, imposing the severest penalties on such practices. I may here mention, that all frauds of this kind, committed by the master or mariners of a ship, whether by running away with her, sinking her, deserting her, embezzling the cargo, and the like, are designated by the general term *barratry*, derived from the Italian *barratrare*, which signifies *to cheat;* and they are commonly among the perils insured against by a sea-policy.

The statute of Charles II., passed in the 22nd year of his reign, after reciting "that it often happens that masters and mariners of ships having insured or taken upon bottomry greater sums of money than the value of their adventure, do wilfully cast away, burn, or otherwise destroy the ships under their charge, to the merchants' and owners' great loss," enacts "that if any captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn,

or otherwise destroy the ship, unto which he belongeth, or procure the same to be done, he shall suffer death as a felon."

This has been followed by divers others, one of which, the 11th George I. chapter 29, section 6, enacts—"That, if any owner of, or captain, master, mariner, or other officer, belonging to, any ship or vessel, shall wilfully cast away, burn, or otherwise destroy the ship or vessel, of which he is owner, or to which he belongeth, or in anywise direct or procure the same to be done, with intent or design to prejudice any person or persons, that hath or shall underwrite any policy or policies of insurance thereon, or any merchant or merchants that shall load goods thereon, or any owner or owners of such ship or vessel, the person or persons offending therein being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer as in cases of felony without benefit of clergy."

Lastly, I subjoin a few modern forms of contract, the perusal of which may be found instructive.

HYPOTHECATION OF SHIP AND CARGO AT LISBON.

Know all to whom this instrument of bond and bill of maritime risk and bottomry may come, that on the day of A.D. 1820, in the city of Lisbon, in my office personally appeared Iacomo Mazzola, captain of the ship called the *Gratitudine*, whom I know to be the real person; and he declared to me the notary in the presence of the witnesses hereinafter mentioned, that within twenty-four hours after the arrival of his said ship at London, or any other port, and previous to beginning to make any delivery of the cargo at the port aforesaid, or any other port, he, the captain, or whosoever may act in lieu of him, or in case of his absence, perform his duties, shall pay by this bill of risk, sea exchange, and bottomry, to Francis Manoel Calvert, or to his order, the sum of 2,000*l.*, principal and premium of risk and sea exchange, at the rate of twenty per cent., the which principal he acknowledged to have received here of the said Francis Manoel Calvert, in current money of this kingdom, under the denomination of true and legitimate money of sea exchange and bottomry, on the hull, keel, and appurtenances of the said ship, and therewith to supply the wants of the repairs, and of the cargo of the same, on which he had effectively invested it; the said Francis Manoel Calvert taking upon himself, in consideration of the aforesaid premium of twenty per cent. agreed for and settled between them, to run the sea risk on the said hull, keel, and appurtenances, and cargo of the said ship, in her ensuing voyage, which the said captain is about prosecuting from this port of Lisbon to that of London, these being the risks which the said Francis Manoel Calvert takes on himself, and is to run, viz. of the sea, winds, fire, stranding, and shipwreck, enemies, detentions of princes, and reprizals, during the whole of the said voyage, excepting

those of barratry of the master, and of average as well particular as general; the which risk shall commence to run from the hour when the ship shall leave her first anchor, to set sail from this port, and shall cease in twenty-four hours after having come to an anchor; and for the ready payment of the aforesaid sum, he the captain binds himself and his effects, and by special mortgage the ship, cargo, and freights due, or that may become due; and in case of failure of payment in due time, he binds himself under this clause of mortgage to pay to him or to his order, for all the delay until full payment, at and after the rate of six per cent. per annum; and there being also present Andrea Belucci, mate of the said ship, by whom it was declared, that in case of the absence of the captain, he bound himself to fulfil the contents of this bond; after these presents being read to them, I, the notary, in the presence of the witnesses following, viz. Eugenio Coetho, vice-consul, Pedro Rocks, interpreter, &c. caused this instrument to be transferred from my book of notes, to which I refer myself, and I have subscribed and signed it in due form.

In testimony, &c.

A BOTTOMRY BILL.

To all men to whom these presents shall come I, A. B., of Bengal, part owner and master of the ship called the *Exeter*, of the burthen of five hundred tons, now riding at anchor in Table Bay at the Cape of Good Hope, send greeting:

Whereas, I, the said A. B., now navigating the said ship on a voyage from Bengal to the port of London, having put into Table Bay for the purpose of procuring provision and other supplies necessary for the continuation of the voyage aforesaid, am at this time necessitated to take on the adventure of the said ship the sum of 1,000*l.* sterling for setting the said ship to sea, and furnishing her with provisions and necessaries for the said voyage, which sum C. D. of the Cape of Good Hope, master attendant, hath at my request lent unto me at the rate of 1,200*l.* sterling for the said 1,000*l.*, being at the rate of 120*l.* for every 100*l.* advanced as aforesaid, during the voyage of the said ship from Table Bay to London. Now know ye, that I, A. B., by these presents, do, for me, my executors, and administrators, covenant with the said C. D., his executors, and administrators, that the said ship shall, with the first convoy which shall offer for England, sail and depart for the port of London, there to finish the voyage aforesaid. And I, the said A. B., in consideration of the sum of 1,000*l.* sterling to me in hand paid by the said C. D. at and before the sealing and delivery of these presents, do hereby bind myself, my executors, and administrators, my goods and chattels, and particularly the said ship, the tackle, and apparel of the same, and also the freight of the said ship which is or shall become due for the aforesaid voyage from Bengal to the port of London, to pay unto the said C. D., his executors, administrators, or assigns, the sum of 1,200*l.*

sterling, within thirty days next after the safe arrival of the said ship at the port of London from the said intended voyage.

And I, the said A. B., do, for me, my executors, and administrators, covenant with the said C. D., his executors and administrators, by these presents, that I, the said A. B., at the time of sealing and delivering of these presents, am a true and lawful part owner and master of the said ship, and have power and authority to charge and engage the said ship with her freight as aforesaid, and that the said ship with her freight shall at all times after the said voyage be liable for the payment of the said 1,200*l.*, according to the true intent and meaning of these presents.

And lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away before her arrival at the said port of London from the said intended voyage, then the payment of the said 1,200*l.* shall not be demanded, or be recoverable by the said C. D., his executors, administrators, or assigns, but shall cease and determine, and the loss thereby shall be wholly borne and sustained by the said C. D., his executors and administrators, and that then and from thenceforth every act, matter, and thing herein mentioned on the part and behalf of the said A. B. shall be void, anything herein contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others shall be null and void.

At the Cape of Good Hope, this
day of A.D. 1800.

A RESPONDENTIA BOND ON A VOYAGE TO THE EAST INDIES.

Know all men by these presents, that we, James Fearon, commander of the ship *Belvidere* in the service of the honourable East India Company, and Peter Douglas, of &c., merchant, are held and firmly bound to Hans Busk, of &c., merchant, in the sum or penalty of 1,500*l.* of good and lawful money of Great Britain, to be paid to the said Hans Busk, or to his executors, administrators, or assigns, to which payment we bind ourselves, jointly and separately, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, this —— day of —— 1801.

Whereas the above named Hans Busk has, on the day above written, lent unto the said James Fearon and Peter Douglas the sum of 750*l.* upon the goods and merchandizes laden and to be laden on board the good ship called the *Belvidere*, of the burthen of nine hundred tons or thereabouts, now riding at anchor in the river Thames, outward bound to China, whereof James Fearon is commander, by his acceptance of a bill of exchange to that amount at

four months' date for the account of them the said James Fearon and Peter Douglas. Now the condition of this obligation is such, that if the said ship shall with all convenient speed proceed and sail from and out of the river Thames on a voyage to any port or place, ports or places, in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, and from thence shall sail and return into the river Thames at or before the expiration of thirty-six calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage (the dangers and casualties of the seas excepted); and if the said James Fearon and Peter Douglas, or either of them, their or either of their heirs, executors, or administrators, shall within thirty days next after the said ship shall be arrived at her moorings in the river Thames from her said intended voyage, or at or upon the expiration of the said thirty-six calendar months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said Hans Busk, his executors, administrators, or assigns, the full sum of 1,020*l.* sterling, together with thirteen pounds, ten shillings per calendar month for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said thirty-six calendar months, to be accounted from the day of the date above written; or if in the said voyage, and within the said thirty-six calendar months to be accounted as aforesaid, an utter loss of the said ship by fire, enemies, men-of-war, or any other casualties shall unavoidably happen, and the said James Fearon and Peter Douglas, their heirs, executors, or administrators, shall within six calendar months next after such loss, well and truly account and pay unto the said Hans Busk, his executors, administrators, or assigns, a just and proportionable average on all the goods and merchandizes of the said James Fearon carried from England on board the said ship or vessel and the nett proceeds thereof, and on all other goods and effects which the said James Fearon shall acquire during the said voyage, for or by reason of such goods and merchandize, and which shall not be unavoidably lost, then the above written obligation to be void and of none effect, else to stand in full force and virtue.

In witness, &c.

POLICY OF INSURANCE BY UNDERWRITERS ON SHIP AND GOODS.

In the name of God, Amen.

A. B. as well in his own name as for and in the name and names of all and every other person or persons to whom the same doth, or shall appertain, in part or in all, doth make assurance, and cause C. D., E. F., &c. and them and every of them to be insured, lost, or not lost, at and from, &c., upon any kind of goods and marchandizes,

and also upon the body, tackle, ordnance, munition, boat and other furniture, of and in the good ship called the *British Queen*, whereof is master, under God, for this present voyage, X. Y., beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the said ship, and upon the said ship, &c., and to continue until the said ship shall be arrived at, &c.; upon the said ship, &c., until she hath moored at anchor twenty-four hours in safety; and upon the goods and merchandizes, until the same be there discharged and safely landed. And it shall be lawful for the said ship in this voyage to proceed and sail to and touch and stay at any ports and places whatsoever, &c., without prejudice to this insurance. The said ship, &c., goods and merchandizes, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at &c.

Touching the adventures and perils which we the assurers are contented to bear and take upon us in this voyage, they are of the seas, men-of-war, fire, enemies, pirates, thieves, jettisons, letters of mart and counter-mart, surprisals, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandizes, and ship, &c., or any part thereof. And in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandize and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we the assurers will contribute each according to the rate and quantity of his sum herein assured. And it is agreed by us the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and administrators, to the assured, their executors, administrators and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured at and after the rate of

In witness, &c.

N.B. Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general, or the ship be stranded: sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average under five pounds per cent. And all other goods, also the ship and freight, are warranted free from average under three pounds per cent., unless general, or the ship be stranded.

APPENDIX VI.

CHARACTER OF THE ATHENIAN TRIBUNALS.

In Arnold's History of Rome we read as follows:

"What record of mere battles and sieges, wars and facts, could afford such fulness of knowledge, as to the real state of Greece, in all points which are most instructive, as we derive from the pamphlets (as they may be called) of Isocrates, from the dialogues of Plato, the moral and political treatises of Aristotle, and the various public and private orations of Isæus, Æschines, and Demosthenes?"

This is especially true of the forensic speeches of the Attic orators. No record of antiquity gives us so clear an insight into the life and character of the Athenians. Here we have the citizen of Athens, not, as depicted by Thucydides, in the assembly or the camp; not caricatured, as by Aristophanes; but in his real and individual character, in all the relations of social life; in the corn market or on the exchange; in the factory or the banking house; attending to his farm in the country, or negotiating in the harbour with merchants and ship-owners; assisting at the registration of a birth, or surrounded by friends on his deathbed, and making his last will. No part of history is so pleasing or instructive as that which brings us behind the curtain of society, exhibiting to us men as they are seen in domestic life, in their dealings and intercourse with their neighbours.

To understand and duly profit by these speeches, the reader must not come unfurnished with previous instruction. As to the public orations you should bring with you a certain amount of historical learning, so the private speeches require some general acquaintance with the system of Attic jurisprudence. You need no more than this general acquaintance, to begin with. As you proceed with the perusal of the orators themselves, you fill up the outline which you have got in your head with those details, which give life and reality to the picture. A knowledge of the laws is of no use without reading the speeches, and the speeches cannot be read without knowing the laws.

In connexion with this translation I have, in the humble hope of assisting the reader, presented him with a series of commentaries on Attic history and archæology, illustrating the various topics handled or touched on by Demosthenes. In doing this I have simply sought to be useful. I do not pretend to have made any discoveries, or to advance anything which is new; but only to give information upon dull and difficult subjects in an easier form than it is given elsewhere. I have therefore made free use of the labours of men far more learned than myself, both German and English, mingling my own observations

occasionally where I deemed it desirable, or where I might happen to differ in opinion from any writer whom I quoted. The object which I have proposed to myself has been, so to dress up matters of antiquity as to make them readable. Elaborate treatises, most valuable as storehouses of materials, can rarely be read except by the learned few. Nor can they be much improved in this respect by abridgment, which, while it destroys their utility as books of reference, renders them less intelligible as the materials are condensed. I have therefore endeavoured to handle topics of this kind in a more popular manner, as far as was consistent with the nature of the subject; so as to render them more intelligible to the ordinary reader, and to fix them better in the memory of all; keeping in view what Schömann says of himself in the preface to his "Antiquitates Juris Publici Græcorum"—"brevitatem ita secutus sum, ut non officeret perspicuitati; summas tantum rerum proposui, sed has ipsas quantum fieri potuit plane et dilucide."

In explaining points of Attic law, I frequently, for the purpose of illustration, refer to the laws of modern times. This hardly needs an apology. In the legislation of all civilized countries we may trace certain common principles, amidst an infinite variety of codes and ordinances. When we find such agreement in essential points, we ascribe it not to accident or imitation, but to the natural instinct of a social being. In mere conventional rules and matters of form, it is not unpleasing to discover a resemblance between the institutions of remote ages. A comparison of laws, by exhibiting the advantages of one system and the defects of another, affords to the observant reader materials for many a practical lesson; while it is useful to all, inasmuch as every subject of knowledge is better taught by the help of analogy. Nor is it without advantage, at the same time to illustrate the law of Athens, and to introduce the reader to some acquaintance with his own: for I may fairly suppose, that the greater part of my readers will be young men, pursuing their studies at the University or elsewhere.

I have already explained the general features of the Attic law, the constitution of its courts, and their procedure and practice. It remains only to notice some peculiarities attending them, and to make such observations upon their character, as reflection and experience suggest.

The principal point to be noticed is the tribunal itself, by which Attic causes were tried; I mean the jury. Its members, its powers, its temper and qualification for judicial duties, are subjects demanding particular attention.

The Heliastic tribunal, or jury, was originally designed by Solon for political purposes, to revise the laws, to correct constitutional abuses, and punish offenders against the state. A body of six thousand citizens was therefore chosen by lot every year, to form a supreme court, called Heliæa, which was divided into several smaller courts

varying in number according to the exigency of the occasion. The qualifications required for the Heliæa were the same with those required for the popular Assembly, except that the members of the former must have reached their thirtieth year of age. The political object which Solon had in view appears partly (as Thirlwall has observed) from the oath prescribed to its members; and still more from the enactments respecting the revision of the laws, and the punishment of persons who sought to introduce new laws against the spirit of the constitution. The oath occurs in the speech against Timocrates (ante, p. 38,) and with respect to the revision of the laws &c., the reader will find every information in that same speech and in Volume II. Appendix VII.

From this body of men, originally constituted with a political object, were taken the juries who were impanelled to try private causes; and hence it came about, first, that they were impanelled in such large numbers, rarely less than two or three hundred, and sometimes five hundred or a thousand; and secondly, that they were entrusted with the whole judicial power, after the cause was brought into court, the power (namely) of deciding upon the law as well as the fact, without being directed or controlled by a presiding judge. Such being the origin of this regulation, we will proceed to examine some of its effects and consequences. But before we do so, let us see what Thirlwall has said upon the subject in his History of Greece. (Vol. II. p. 47.)

"Solon believed that no higher qualities were requisite for the discharge of the duties he assigned to them, than the ordinary degree of intelligence and integrity which might be expected in every citizen, aided by that practical experience, which it was the great object of his institutions to impart equally to all. Nothing seems more directly opposite to his views, and to the genius of his system, than the design attributed to him by Plutarch, who fancies that he wrapt his laws in studied obscurity, for the purpose of multiplying the causes of litigation. It is possible that their antique simplicity itself may have laid them more open to be wrested by chicanery than those framed in ages of greater refinement. But the legislator himself assuredly thought their sense so plain, as to be within the reach of the commonest capacity. Hence he was not led to draw that nice distinction, which is so familiar to us, between the province of the judge and jury: hence every magistrate, within whose sphere of administration legal controversies might arise, was empowered to preside over the court to which they were referred: hence at Athens there was no class of men who dedicated themselves to the study of the law as a profession; the only persons who there corresponded in some degree to the Roman jurists, were the expounders of the traditional rules and forms concerning religious observances.[1] It was Solon's wish to accustom every citizen to consider himself as personally concerned in the

(1) ἐξηγηταί.

maintenance of the laws: the best state, he is reported to have said, is that in which all who witness wrong are no less active in procuring its redress and the punishment of the aggressor, than the sufferer himself. Hence he permitted and encouraged every citizen to come forward as a prosecutor, in cases affecting the interest of the state; and he multiplied the avenues to justice, by affording the means of choosing among a great variety of modes of proceeding. The motive which led Solon to direct that so great a number of jurors as composed each of the Heliastic courts, never amounting to less than several hundreds, should sit together on the same cause, must be referred to the view he took of them as representatives of the people. Hence, to ensure that the spirit with which they were animated should always be in accordance with the opinions and sentiments of the whole body, it might seem necessary to collect them in large masses. For the same reason they were free from all legal responsibility; and they were screened from disgrace, not only by the greatness of their numbers, but by the secrecy of their votes. It might reasonably have been expected, that the danger arising from the certainty of impunity, accompanying the exercise of almost absolute power, would have been in some measure compensated by the security which seemed to be afforded by the same causes against venality and corruption. We learn however, that means were at length discovered of eluding these obstacles, and that the practice of bribery in the courts of justice was reduced to a regular system."

The charge of corruption which has been brought against the Athenian juries rests upon too slender authority to be fully credited. Anytus may possibly (as Plutarch says) have bribed the jury upon his own trial for treason; but that bribery was reduced to a system is not sufficiently made out by a quotation from Aristotle by Harpocration.[1] We find no evidence of it in the Attic orators; and the number of the jury, as well as their voting by ballot, renders the supposition improbable. I am inclined to think, that the Attic jurors were tolerably free from motives of direct personal interest; though, in their collective character, they were subject to certain other dangerous influences, natural and perhaps inevitable under the circumstances.

With a large body of men there is not the same feeling of responsibility as with a small body; and more especially when they vote by ballot. No juror could by his own suffrage secure a righteous judgment, and the shame of an unjust one was nothing, when shared among so many. The reader will remember what Demosthenes says on the trial of Aristogiton, (ante, p. 81, 82.) And Lycurgus expressed a similar fear, when he said to the jury—"remember, though each of you will vote in secret, he cannot conceal his intention from the gods."

The political character of the Attic jurors caused some arguments

(1) Sub voce δεκάζων.

to be addressed to them, and supported by evidence, which in our country would be regarded as irrelevant and inadmissible. Such were the attacks made upon the adversary for concealing his property and evading the public services, and the assumption of credit to the speaker for his own liberality and public spirit. Thus, Chrysippus claims the gratitude of the jury for himself and his brother, on account of their donations of corn to the people, of which he produces evidence; and urges how unlikely it was that persons proved to have been so generous should bring an unfounded action for twenty minas: (ante, p. 182.) In the defence of Phormio the advocate calls witnesses to contrast the virtues of his client with the vicious character of the plaintiff; showing that the latter had brought vexatious actions and prosecutions against a multitude of people, while the defendant had done many acts of generosity, both public and private; and he reminds the jury, that the property in dispute would be more serviceable to them in the hands of Phormio, who was always so kind to those who desired his assistance: (ante, p. 218.)

These arguments present themselves in three different aspects. In the first place, the gratitude of the jury is invoked in favour of one of the parties for having rendered public service. This, though we should consider it wholly inadmissible in a private cause between man and man, was nevertheless an appeal to an amiable feeling, and seems not to have been at all objected to at Athens. (Compare ante, p. 250.) Secondly, evidence to character is offered, for the one party, and against the other. This with us is only done on criminal trials, and then only for the accused, and not against him, except, under certain circumstances, in the case of a previous conviction. The thing itself however is far from being absurd; nay, it might in many cases be attended with advantage; though I allow that it is better to adhere to the general rule. Thirdly, we have an appeal to feelings of a more objectionable kind, when the jury are reminded of the benefit they would derive by deciding for the party addressing them. The same argument is still more pointedly urged in the peroration of the second speech against Aphobus; (ante, p. 119;) and it is impossible not to regard it with disapprobation. It appeals to the selfishness of the jury. At the same time we must remember, it is a political, not an individual selfishness, which is appealed to; a selfish patriotism, if such an expression may be allowed. If the jury were influenced by such an argument, it might be in some measure from a sense of duty, though a mistaken one.

Examples of similar arguments from Lysias and Isæus will be found in Volume III. Appendix II.

There is one also in the Trapezitic oration of Isocrates. This was written for a client, a merchant of Bosporus, who had brought an action against Pasion the banker, to recover a deposit. He produces a letter written in his favour by Satyrus, king of the country, whose

minister the plaintiff's father was; and reminds the Athenians of the numerous acts of kindness which Satyrus and his father had done them, by sending corn to Athens in times of scarcity.

One of the most striking instances of attack upon the adversary's character is that in the speech against Midias, where a paper is read reciting various injurious acts which Midias had committed in the course of his life. (See Volume III. p. 109, and the Argument to the speech.)

As the court partook so much of the character of a popular assembly, it must have been susceptible of the various impulses and passions by which that assembly was agitated, and the orators knew how to work upon such materials. We observe how often they address the jury as if they were addressing the whole people of Athens. Decrees of the assembly, or verdicts of other juries, are spoken of as being the acts of the court before whom the speaker stands. "You did this and that—your practice is so and so"—such are the ordinary expressions. Chrysippus says (ante, p. 184)—"You are the same persons who punished with death a man who had obtained fresh loans upon your exchange and did not provide for his creditors their securities." I need not multiply examples. The impulses of a popular body are most commonly honest and generous; and the great thing is to give a right direction to them. Zeal for the commonwealth is one; and this was most frequently misdirected at Athens. Sympathy with the oppressed, indignation against cruelty and insolence, are feelings quickly excited in a multitude. These prompted the Athenian courts to favour orphans, heiresses, and people in humble circumstances, and to dislike usurers and avaricious and proud people who gave themselves airs. Hence, as Demosthenes assures us, he was urged by so many people not to drop his prosecution against Midias; (Vol. III. p. 134.) And the son of Aristæchmus is bold enough to tell the jury, that his father, upon an action being brought against him by his wards for eighty talents, did wisely to compromise it for three talents, considering the advantages which the plaintiffs would have had; for, says he, "they were orphans and young, and their characters were unknown; things that with you, as every one knows, outweigh a multitude of arguments."

To give way to these good feelings too hastily, too impetuously, too credulously, and so to be imposed upon frequently by designing parties, was inevitable with a court so constituted; nor indeed can any judicial body avoid being led into occasional error even by its virtues. Apollodorus says in the action against Stephanus, that the speech made in Phormio's defence made such an impression on the court, that they would not hear a word that he had to say: (ante, p. 203:) and Nicobulus makes a similar complaint against the jury who condemned Euergus: (ante, p. 240.) There are plenty of instances where the orator speaks of previous verdicts as having been

given hastily and wrongly; and how often do they insinuate their fears, lest the opponent should prevail against them by a crafty speech or other improper means.

It was not possible in a city like Athens, that a bench, composed of three or four hundred persons, should be entirely free from prejudice and partiality, either on private or political grounds: nor were such influences discountenanced as they should have been. Plutarch reports Themistocles to have said—"Heaven forbid that, if I were on the bench, I should not favour a friend more than a stranger." I do not attach so much importance to this story, as to the express statements of the orators, and the general tenor of their arguments. Personal enmity was held to be a just ground for undertaking a prosecution, and why should the judge have a higher code of morality than the prosecutor? (See the opening of the speeches against Androtion, Timocrates, Nicostratus, Neæra; and see what Mantitheus says, ante, pages 256, 260. On the other hand, Lycurgus on the prosecution of Leocrates, and Euthycles on that of Aristocrates, disclaim motives of private enmity.) The practice of bringing friends into court to influence the jury, if it was not considered perfectly legitimate, was at all events tolerated, and stood pretty much on the same footing with the custom of producing a man's children at the bar, to move the compassion of the jury, and obtain a mitigation of his sentence. The term *παρασκευή*, which (according to its natural import) might signify the whole preparation for conducting a cause, was understood in a more limited sense to denote an array of friends, who by their appearance in court, or by open intercession and advocacy, endeavoured to influence the bench. (See the opening of the speech of Andocides On the Mysteries.) Cicero's language is a paraphrase of this term: "non una est ratio defensionis ea, quæ posita est in oratione. Omnes qui adsunt, qui laborant, qui salvum volunt, pro suâ parte atque auctoritate defendunt." Lycurgus, who was one of the most pure and high-minded men that Athens ever produced, condemns the practice in his speech against Leocrates: (20. Ed. Bekker:) His words are: "You are aware, men of Athens, of the efforts which are made by accused persons to influence the court, and the earnest petitions which are made for them by their friends. You well know, that many witnesses are induced by jobbing and by bribery either to have a conveniently bad memory, or to absent themselves, or find excuses." Demosthenes is constantly attacking, either obliquely or directly, the supporters of his opponent, who were perhaps standing near to the speaker, or looking at the jury, and making themselves conspicuous and offensive by sneers and expressions of dissent. The spirit of party and club-fellowship was powerful at Athens, and would lead men to support one another in courts of justice as well as in the assembly and elsewhere. Other bonds of union of a less reputable character are sometimes spoken of by the orators, such as the gangs of swindlers in the Piræus and

similar combinations; (ante, pages 153, 240, 256:) but allowance must always be made for the exaggerating language of an adverse speaker. The attendance of friends and partisans, to sway the votes of the jury, was far more common, and doubtless considered more legitimate, in criminal than in civil cases; yet it occurred in both, and especially on important trials, and in the case of persons, who by their station or popularity were able to command influence, such as Æschines, Timotheus, or a rich banker like Phormio: (See ante, pages 41, 68, 138.) It might happen that a party had made himself unpopular in the city by his habits of life, or even by his manners and personal appearance, and people who saw him every day in the street or market might be on the bench. This would operate against him, and the more so, as he was obliged to be in court, and generally to conduct his own cause. Nicobulus deprecates the prejudice which might be raised against him by the fact of his being a money-lender, or by his coarse demeanour and other personal peculiarities; and adroitly endeavours (or rather Demosthenes, who wrote his speech, endeavours for him) to turn the prejudice against the adversary, for having sought to take an unfair advantage of those circumstances: (ante, p. 241.)

Another consequence of having a numerous jury taken from a small population was, that the jurors must often have had a knowledge of the facts of the case, or some of them, and this knowledge was often appealed to, and sometimes for lack of other proof. In many cases there could be no great harm in this; at all events, it was unavoidable, and the same for both parties. Things which had passed in the popular assembly, or upon other trials, would be referred to as notorious. (See ante, pp. 5, 142.) There is an example in the speech against Euergus and Mnesibulus, p. 1152: and one in that of Lysias against Theomnestus. The plaintiff has brought an action for defamation. The defendant had some time before been impeached for cowardice in battle, and, because the plaintiff had given evidence against him, he called him a parricide. The plaintiff says in the opening of his speech—"I shall be at no loss for witnesses; for I see that many of you who are now on the bench were present at the former trial." In the speech against Onetor, Demosthenes speaks of the notoriety of the misconduct of his guardians, and of meetings having been held during his minority before the archon and other persons. Statements of this kind abound, and are often made artfully and designedly. One of the most remarkable cases of appeal to general notoriety is that of Æschines on the accusation of Timarchus: (89, Ed. Bekker.) He calls on the jurors to be his witnesses, excusing himself for not producing other testimony on account of the difficulty of procuring it, because the only direct evidence would be that of accomplices, who could not be expected to come forward and criminate themselves. But the whole previous life of Timarchus, he contends, was before the court, and everyone knew

the vices which he had been addicted to. "Such"—says the orator—"is the testimony given by the whole people of Athens, and it is not meet that they should be supposed guilty of falsehood." In support of his argument, he refers to the practice of the Areopagus, and proceeds thus:

"Take for example the council of Areopagus, the strictest tribunal in the city. Many have I seen convicted before that court, who spoke exceedingly well and produced witnesses; others I have known to succeed, who spoke very badly and offered no evidence. The judgments of that council are not formed from the speeches and witnesses alone, but are the result of their own knowledge and inquiry; therefore it has ever continued to hold the highest reputation in this republic. In the same manner ought you, Athenians, to pass sentence now. Let nothing weigh with you so much as your own knowledge and impression respecting the conduct of Timarchus; and, in forming your opinions, look to the past rather than to the present time. The reports, which were spread in former times about Timarchus and his mode of life, were founded in truth; whereas the statements, which you will hear to-day, are concerted to deceive you at the trial. Upon these principles give your judgment, having regard to length of time and to truth, and to the facts within your own knowledge."

Then he dilates on the efficacy of Fame or Rumour, who was worshipped as a goddess at Athens, and quotes verses in praise of her from Hesiod, Homer, and Euripides.

The argument is commented on by Demosthenes in the Oration on the Embassy, where he contends that Æschines ought to be convicted on his own principles. (Vol. II. p. 191.)

Originally our own jurors were only witnesses; which came about in this way. A custom sprang up in ancient times of calling in the assistance of the neighbours, or inhabitants of the county or district, to speak to facts within their own knowledge upon important trials. Various examples of this practice are recorded both in the Saxon era, upon trials in the old county courts, and in the first century after the Conquest, upon trials before the king's justiciary. The persons thus called in to assist the courts by their information were at first nothing more than witnesses, speaking to facts within their own knowledge. Sometimes a very large number of these were called in, and being supposed to represent all the testimony of the county or district, the courts deferred to their superior knowledge and gave judgment in accordance with it. So it became the practice on important occasions to summon such persons to attend the courts; and these bodies of men, taken from the neighbourhood, from witnesses became a sort of referees, and virtually the deciding tribunal. The thing was made perpetual by the establishment of the Grand Assize in the reign of Henry II. and the practice that grew up under it; which was adapted, with some variation, to criminal cases. And both in these

and in civil cases it long continued to be an essential qualification for a juror, that he should have some previous knowledge of the facts; and therefore all the jurors were obliged to be summoned from the neighbourhood; in criminal cases, from the neighbourhood where the crime was committed, and in civil cases, from the neighbourhood where the disputed property lay, or where the litigants resided. It was not sufficient to have a jury from the county at large, as it now is; it was necessary that the jury should be drawn from the parish or district, in order that they might assist the court with their knowledge of the circumstances.

This ancient law in England gradually gave way to a change in public opinion, but not till the close of the seventeenth century. It then became a maxim, (which is now finally settled in our law,) that juries were not to find verdicts of their own knowledge, but to decide wholly by the evidence which they heard in court; and, if any juror possessed private information upon the subject, he was bound to inform the court of it. This principle once being established, there ceased to be any advantage in having juries from the immediate neighbourhood; indeed, it was considered better to avoid the prejudice or partiality which a jury consisting of neighbours might import into the trial; and so, after the old practice had been for some time considerably relaxed, it was enacted by a statute in the reign of Queen Anne, that juries in civil cases should be summoned from the body of the county; and the same rule was afterwards applied to criminal trials.

In a city where the whole body of jurors was only six thousand, it was impossible to apply such a rule as now prevails with us: the bench must always have been composed (more or less) of the neighbours of the parties. As the Athenians never retired to consider their verdict, but gave their votes immediately after the termination of the speeches, they had not much opportunity of communicating with each other. If any juror possessed a private knowledge of the facts, he might whisper it perhaps to the man who sat next him, or he might indicate by some sign his assent to the speaker's statement; but such a medium of proof must have been uncertain and dangerous. We may conceive that a party might have a friend on the bench, who helped him in this way. It was a common trick for the parties to assume that certain facts, from their general notoriety, needed no proof, and to use such expressions as the following—"You are of course aware"—"I presume, none of you are ignorant." We have seen how Demosthenes, who employs the artifice so frequently himself, cautions the jury against being taken in by it: (ante, p. 279:)—"he is such a crafty knave, that, what he has no witnesses to prove, he will say is well known to you, men of the jury: a trick which all people resort to, who have no good argument to offer. Should he attempt such a trick, put him down; expose him. What any one of you does not know, don't let him fancy his neighbour knows: require

Bœotus to give clear proof of everything he asserts, &c." It appears, as if he were asking the jurors to express their dissent to any assertions that should be made in this way.

With respect to the ability of the Athenian jurors to perform the judicial duty imposed on them, there is a good deal to be said on both sides. That they should perform it in a thoroughly business-like manner, or so as to fulfil what may have been Solon's conception of the trust confided to them, was hardly in the nature of things. They had to administer justice according to the written law, and of course to interpret that law; where there was no written statute, they were bound to decide according to the best of their ability; that is, in the absence of any express legislative provision, they were required to apply the general principles of law and justice to the case before them. They were also sole judges of the facts of every case. They were persons of no legal education or learning; taken at haphazard from the whole body of citizens, and mostly belonging to the lowest and poorest class of them. On the other hand, the Athenians were naturally the quickest and cleverest people in the world. Their wits were sharpened by the habit of attending the theatres and public assemblies, of taking an active part in important debates, and hearing the most splendid orators. There was so much litigation at Athens, that they were constantly either engaged as jurors, or present as spectators in courts of law. Cases of all varieties were brought before them, involving difficult questions concerning pedigree and succession, marital and filial right, mercantile and mining contracts, besides assaults, trespasses, frauds, and criminal charges of every description. Then they lived an out-of-door life, constantly meeting in the market-place or elsewhere, hearing foreign news, discussing politics, &c. All this was a sort of education, and, if not the best, still it fitted the people in some measure for the performance of the duties we are speaking of.

The materials for the trial were prepared by the parties themselves or their pleaders, under the superintendence of the magistrate; and I apprehend that important cases were generally got up under the advice of pleaders, at least where the suitors were not men of experience or ability. The jury had to decide upon the materials thus prepared. There was no examination of witnesses in court, requiring a nice application of rules of evidence: all that was done beforehand. As there were no multiplied copies of the statutes, they depended for their law upon the copies or extracts produced by the parties. The orators have been accused of sometimes misquoting or garbling the law; and such a thing may have been done occasionally; yet it must have been a dangerous experiment; for the laws which either party relied on were always reduced to writing and put into the box together with the other evidentiary documents; the production of a fictitious law was an offence punishable with death; and, as every citizen had access to the temple of Cybele and other places where the

laws were open to inspection, we may conclude that the vigilance of the adversary, as well as that of the magistrate, would operate as a check upon such malpractices. Although the laws were not very complicated, it is likely enough that the court made many mistakes in the interpretation of them, as the judges do in all countries; and they would often depart from the letter of the law, in order to do what they thought substantial equity. There must have been many cases too, where the law was not properly laid before the court, through the ignorance of the suitors themselves.

The hearing of a cause in some respects resembled an English trial at common law, in others it was more like a hearing in Chancery; the evidence being all reduced to the shape of depositions, though the witnesses attended in court to confirm them, or to disclaim them, if they were not such as they could assent to. The jury liked to see the witnesses, to be able to judge of them by their demeanour; but no cross-examination was permitted. The time allowed to each party for his speech was limited, the scheme of the whole arrangement being, to compress the trial into a reasonably short compass. To judge from the speeches which have come down to us, it would appear that ample time was allowed for addressing the court. While the evidence was read, the water-glass was stopped, as the limitation of time applied to the speeches only. The plan of reading the evidence during the speech was attended with much advantage, but was not free from evil, as a little reflexion will show.

The rule was, that every assertion either of fact or law, which required proof, should be proved at the time that it was made, or as soon after as possible. Nothing seems fairer than this, and nothing is fairer, if the rule can be fully carried out. In practice however it would be found exceedingly difficult; for, in relating a series of facts, if you stop every moment to prove each fact which you assert, your story is interrupted, and the effect of it weakened. Comments and inferences too have to be interwoven with your facts, so that the whole may be presented in the shape of an argument; and for this you must have some latitude of discretion as to the time when you produce your evidence. It is obvious therefore, that the rule, which required proof to follow assertion, could not be observed literally; nor did any Athenian ever imagine that it could. It is true, the spirit of the rule might have been complied with, by the production of evidence at the close of every distinct narrative or argument: but, on the other hand, it was easy to evade it, and we see by the speeches of the Attic orators, that they did evade it. The plan was, to string a number of assertions together, and to prove some of them only, and so to manage the thing, that the jury should not remember what was proved and what was not. In a meagre case the great art must have been, to eke it out with the least possible testimony, and to put the speech together in such a way, that it should appear to contain more proof than it really did. Evidence was frequently offered upon com-

paratively immaterial points; irrelevant topics were introduced, and laws quoted, which had little or no bearing on the question. For example; in the case of Lacritus, there are many depositions put in evidence, to prove the breaches of agreement by his brothers, but not one to fix the defendant with liability for the acts of his brothers, which was the main point to be established.

But would it have been better for the Athenians, if they had had official and permanent judges to direct and control the jury; to point out the fallacies, the falsehoods, the quibbles and artifices of the speakers, and to decide the various points of law which arose? Such a thing would not only have been incompatible with the spirit of the constitution, but would not, in my opinion, have promoted the ends of justice. Under the existing system, a sort of rough justice was done by the Athenian jurors, and it was owing to their freedom, and to the free government of the state. Under a different system, they might have had no justice at all. How was the law for many centuries administered in our own country? The main object of the judges was to enlarge their jurisdiction; they were servile to the crown, and oppressive to the people. To the juries they were dictatorial and insolent. Bacon advised them, that they should be lights to jurors to open their eyes, not guides to lead them by the noses; but this maxim they forgot, in their anxiety to get verdicts for the crown or for other sinister purposes. Fair trials could never be had before the Revolution. Since that time there has certainly been a great change. The press and the public exercise a control over our courts; a better tone of morality prevails; and the judges are obliged to be externally on their good behaviour. Yet there are always some who are not to be trusted, who cover an insidious purpose under the mask of candour and moderation, and who are ready to sum up on one side or the other, to favour this or that particular counsel. I would rather try an important case before a thousand independent jurors without a judge, than before a pliant jury with a judge. We owe all our liberties to the circumstance that English juries occasionally displayed a little English obstinacy.

To estimate rightly the judicial capacity of the Athenian tribunal, we must look at their moral condition as well as their intellectual; and we must look at the condition of the world around them. Even since Christianity has been established, how much there is of vice, fraud, selfishness, baseness of every kind; how few thoroughly good people in the world. A little yeast leavens the whole mass, or I know not what would become of us. But in the ancient world, and especially in large and wealthy cities, what a mass of corruption pervaded the public mind. The great republics in early ages furnish undoubtedly splendid examples of generous devotion and patriotism. But in later times the public spirit degenerated, and national character was debased. The fine literature of Athens must not blind us to the vice and sensuality that prevailed there. As the administration

of justice depends more upon virtue and honesty than upon any forensic skill or judicial acumen, too much is not to be expected in such a state of society as that which existed at Athens, with all her eloquent orators and mercurial-witted people. Let us look more closely into the matter.

We read in the Oratio pro Flacco—

"Hoc dico de toto genere Graecorum. Tribuo illis literas; do multarum artium disciplinam; non adimo sermonis leporem, ingeniorum acumen, dicendi copiam; denique etiam si qua sibi alia sumant, non repugno; testimoniorum religionem et fidem nunquam ista natio coluit, totiusque hujusce rei quae sit vis, quae auctoritas, quod pondus, ignorant."

This savours of the libellous; yet do not the Attic orators themselves, in effect, depreciate their countrymen? Are not they constantly declaring, that the parties opposed to them were leagued in a foul conspiracy—that they came into court relying entirely on false testimony—that false witnesses were always to be had for money—that the testimony of freemen was of far less value than that of slaves—and the like? In the speech against Lacritus it is asserted, "that all the Phaselite merchants were rogues"—in that for Phormio, "that in the commercial world it was thought a wonderful thing for a good man of business to be honest." True it is, that a great deal of this was rhetorical exaggeration. Phormio is set up by the speaker as a pattern of probity; and he reminds his opponent that "to be honest was a more profitable thing than to possess a heap of gold." (See ante, pages 214, 217.) But we must bear in mind, that the strain of wholesale invective, which runs through the Attic orations, was not poured out in the excitement of the moment, but was the artful composition of the pleader, meditating in the closet over his case, and judging from his experience what was the best style of argument to be adopted. We can hardly doubt, that the abuse lavished upon the witnesses and persons concerned in a cause must, by its constant reiteration, have produced a powerful effect on the minds of the jurors, and weakened their belief in the truth of testimony and the honesty of mankind in general: and we cannot wonder, under such circumstances, that people should venture to try speculative actions, and to supply their deficiency of evidence by bold assertion and calumny.

If the charges, which the Attic orators make against their adversaries, could have been proved, our estimate of Athenian character must have been far lower than what it is. But a large proportion of it must have been idle abuse. Æschines, in the prosecution of Timarchus, makes the most odious charges against Demosthenes; charges which were not relevant to the case, were unsupported by any evidence, and do not bear the stamp of credibility. Among other things, he accuses him of having swindled Aristarchus, when a young man, out of three talents. How far Æschines himself was guilty of

the crimes imputed to him by his rival, we cannot say; but they have stronger marks of probability.

Pasion, the banker, carried on a lucrative business for many years, and is represented by Demosthenes to have been a man highly trusted and respected. If the client of Isocrates is to be believed, he was capable of committing any fraud. But the charge made against him was probably untrue; for he carried on his business with credit to the last.

The cases of Apollodorus and Phormio are among the most interesting to be found in Demosthenes. The comparison of his speech for Phormio with those against Stephanus is a study for the lawyer. Each of these men represents the other to be a knave.

Few characters have stood better in history than that of Timotheus. Isocrates, his secretary and friend, has written an elaborate panegyric of him. Apollodorus however, who brought an action against him for a debt due to the bank, represents him in a very different light. For, if his statements are true, Timotheus was not only guilty of fraud, but of gross ingratitude to the plaintiff's father Pasion, who had assisted him so often in his difficulties. Timotheus had proposed to take an oath in his own discharge; and Apollodorus thus remarks upon it:

"I have a word to say about the challenges to oaths; that which I gave to the defendant, and that which he gave me. For, when I had put an oath into the box, he too proposed to take one and discharge himself. If I had not been well aware, how many solemn oaths he has sworn, (to states and individuals) and perjured himself, I should have allowed him to take this oath. But when I can prove by witnesses and strong circumstantial evidence, that his nominees received the money from the bank, I think it would be folly to allow him to swear."

Let us consider for a moment the case against Olympiodorus, in which Demosthenes wrote the speech for the plaintiff.

I must first premise, that, when an Athenian died without issue, and the title to his inheritance was disputed, the various claimants were required to come before the court and interplead. One trial was appointed for all, and the estate was adjudged to the person or persons, who appeared to have the best title. This was a good regulation enough; but there seems to have been mismanagement in the details. Each party was allowed a certain time for speaking, measured by the water-glass; and there were as many balloting urns for the jury, as there were parties in distinct interests. Room was thus afforded for collusion, if the weaker titles coalesced against the stronger, or if unfounded claims were put in, to embarrass the court and the opponent. The adjudication was not final. New claimants, who by absence, or some other reason, were prevented from trying their right before, might afterwards come in and sue the successful party.

Conon, a relation of the plaintiff, died without issue. The plaintiff sent for his brother in law, Olympiodorus, to assist him in performing the last offices to the deceased. He attended as desired, and took occasion to mention, that his mother was related to Conon, and he considered himself entitled to a share in the inheritance. This astonished the plaintiff, who knew the claim to be unfounded. A warm dispute ensued, but ended in a compromise, and an agreement to share the deceased's property between them. The terms were reduced to writing; they bound themselves to make a fair and equal division, and to take all measures in concert for the preservation of the estate. This last clause was dictated by a well-grounded apprehension, that other persons would put in claims, and especially Callippus, the plaintiff's brother, who was at that time abroad. Claimants, in fact, soon appeared, and among others Callippus, who demanded a moiety of the estate. Olympiodorus and the plaintiff determined to resist them all; and it was settled that the former should make title to the whole inheritance, the latter to a moiety. The parties were called before the court in the usual way; but, just as the trial was coming on, the confederates (such was the number of claimants, and the suddenness of their appearance) found themselves unprepared with their case. They then deliberated how they could get the trial put off, and (says the plaintiff) "by good luck it so happened, the Athenians were persuaded to send troops into Acarnania, and Olympiodorus was compelled to join the army." The cause however came on. The plaintiff made an affidavit, stating the absence of Olympiodorus, and the cause thereof; on the other hand it was sworn, that he had gone abroad for delay; the latter view of the case being taken by the jury, the trial proceeded, and the plaintiff declining to defend for the moiety, judgment was given for some of the other parties. On the return of Olympiodorus, he and the plaintiff instantly took measures for the recovery of the estate; and they resolved to proceed as before, putting in separate claims, but secretly co-operating with each other. This was done. The holders of the estate are again brought into court, to try the title. Olympiodorus produces false evidence, which the plaintiff, appearing ostensibly as a distinct party, supports and corroborates; and by this means he obtains a verdict. Upon taking possession, he is required by the plaintiff to give him his share, in pursuance of the agreement. This he refuses to do, and the plaintiff thereupon commences an action against him.

Such is the plaintiff's own account of the transaction; and, in so far as he criminates himself, it may be relied on as correct. He admits his own collusion with Olympiodorus, but seeks to take advantage of his own wrong, and to recover contribution from his partner in fraud. In our country the rule "in pari delicto potior est conditio possidentis" would prevail in such a case. As we do not know whether the suit was successful, we must not too hastily con

demn the Athenian court: but the moral sense of the court must have been somewhat different from that of our courts, or the suit could hardly have been commenced. The only comment that A. G. Becker makes upon the case is as follows—"This speech alone may convince us, how insecure the possession of property was at Athens, and how thoughtlessly and carelessly the jurors often gave their verdicts upon the most important occasions."

How far the Athenian jurors were disposed to favour plaintiffs, and to encourage litigation, for the sake of the three obols which were allowed to them for every sitting, it is not easy to say. Aristophanes plainly enough insinuates this. Isocrates complains, that the citizens stayed at home to sit in the law-courts, instead of manning the ships of war. These writers belonged to the aristocratic party. Their opponents contended that the juries were the bulwarks of the constitution. The multitude were unquestionably tenacious of their judicial power; but less, as I conceive, from any such sordid motives, than from attachment to democracy as by law established. If they were to employ their time in judicial duties, it was but reasonable, at all events, that they should receive a small remuneration.

The attachment of the Athenian people to their jurisdiction is described with some truth, but with much asperity, by Xenophon, in his treatise on the Republic, where he is speaking of the lawsuits of the allies, which were sent to Athens for trial.[1] It was the policy of the Athenians, while they possessed the empire of the sea, to compel their subjects in the Ægean islands to send their causes to be tried at Athens. By this means, says Xenophon, great advantages accrued to the imperial city. In the first place, the revenue was increased by the payment of suitors' fees and harbour dues. Secondly, the influx of strangers furnished employment for a great number of citizens. But the chief advantage was this; that the Athenians, under colour of a jurisdiction, really exercised a political power. They preserved their ascendancy over the subject states, by favouring those parties who were most active in promoting their interest. A foreign tribunal might have done just the reverse; favoured the enemies, and sacrificed the friends of Athens. Besides, if the allies had been suffered to have domestic courts, the only class of Athenians, to whom they paid respect, would have been the generals and ambassadors; the sovereign people they would have disregarded. Being obliged to come to Athens for justice, they found it necessary to court the populace, who filled the judicial benches, and who loved nothing better than the servile flattery of the suitors.

Such is Xenophon's account of the matter. He indeed goes much further. He asserts that any thing could be done at Athens for money, either with the Council or with the people. He represents

(1) As to these, see Δίκαι ἀπὸ συμβόλων in the Archæological Dictionary.

their corrupt practice as a well concerted scheme for the maintenance of democracy. The people, he tells us, well knew the difference betweeen good and bad, but preferred the latter, as being more conducive to their interests. Confiscation, plunder, and oppression were (according to him) essential to the existence of the constitution. He denounces democracy itself, but praises the sagacity of the Athenians, for contriving to keep up a set of abuses, which were a necessary part of the machinery for carrying on the government. This however is to write like a political enemy, not an historian. A scheme of establishing popular supremacy upon the ruin of all that is great and good never entered the head of any but the wildest fanatic; certainly, no such scheme was deliberately acted on by the Athenians. If it had been, the republic could not have lasted for ten years; whereas it flourished for upwards of a century, and, during that period, men of high reputation and ability presided from time to time in every department of public affairs.

The same remarks apply to the censures of Isocrates.

There is a passage in his oration on the Exchange of estates, where he says: "When I was a boy, wealth was considered so secure and honourable, that all men gave themselves out to be richer than they really were. Now, to be wealthy is a crime, and a man must clear himself of the charge, if he wishes to remain in safety." Isocrates wrote this at the age of eighty-two; aud if the statement could be relied on, it would mark the period of an important revolution in Athenian affairs. It cannot however be relied upon. Isocrates was a worthy man; but, when he wrote this oration, he was not in a very good humour with the Athenian democracy.

That property was pretty secure at Athens in the flourishing time of the republic, is clear from the fact that many large fortunes were amassed and enjoyed at Athens, that it was a great mart of commerce, and selected as a favourite place of residence by a multitude of foreigners. Isocrates himself acquired considerable wealth, and lived in the enjoyment of it to a great age.

If justice was not well administered at Athens, it certainly was not for lack of provision by the legislature, or attention to the subject of jurisprudence. They had statutes in abundance, forms of action, processes and pleadings, practice and rules of evidence. The speech writers and orators worked out a course of practice, which the philo sopher afterwards analysed in his closet, and out of which he developed his system of rhetoric, so far as it concerns judicial inquiry, just as from Homer and the Attic tragedians he got materials for his Art of Poetry. He gives us his definitions of crimes and offences, law and equity, his methods of persuasion, proofs artificial and proofs unartificial, rules as to style and elocution, divisions of speeches into argument, exordia, perorations, &c. &c. I shall not trouble the reader with any discussion upon these matters, partly because the Aristo-

telian language does not agree with that of modern times,[1] and partly because I bear in mind the lines of Butler,

> All a rhetorician's rules
> Teach us but to name our tools.

But let us stop for a few moments to consider how certain practical points of evidence were dealt with by the Attic orators.

With respect to their depreciation of direct testimonial evidence—this, as I have already intimated, arose partly from the low standard of morality which prevailed. It was a topic resorted to by the party who was not so well off for witnesses; for the orators comment strongly enough upon the absence of testimony, where it suits their purpose. (See examples ante, pages 139, 179.) But how patent is the fallacy of making a general attack on witnesses. If you have witnesses of your own, your disparaging observations apply to them as well as to those of the adversary. If you have none, what do you rely upon? Your own assertions? But why should they be believed more than the adverse testimony? Or the circumstances of the case? But they are proved by witnesses. A document, it is said, cannot lie. No; not when it is proved to be a genuine document. But it can only be proved to be so by human testimony.

In the case of Apaturius, the defendant asserts that not he, but Archippus, was the surety in certain articles of submission. The articles, which had been in the custody of the plaintiff's friend, were said to have been lost, and the defendant had reason to expect that evidence would be given by the plaintiff to prove the contents He himself had offered no direct evidence to prove that Archippus was the surety; but he reasons in this way—"Perhaps the plaintiff will call a witness against me; that's an easy course for persons who mean to make out a false claim. It ought not to be allowed, as he has lost the document. If I were suing the witness for false testimony, he would be obliged to produce the document: then he ought to be obliged now." All this is absurdly fallacious reasoning. It was a fair matter of observation, that the plaintiff's friend had lost the document; and if the plaintiff's witness were contradicted by good evidence on the other side, it ought perhaps to have turned the scale; but there was nothing more in the point. (Ante, p. 168.)

Let us consider what is so frequently urged by the orators with reference to the evidence of slaves, and the refusal of the adverse party to give up his slave to be examined by torture. As to the

(1) Aristotle's *artificial proofs*, or πίστεις ἔντεχνοι, are those which we prepare for ourselves, such as arguments, inferences, prejudices excited by manner and style of address, or by appealing to the passions. His *unartificial proofs*, or πίστεις ἄτεχνοι, are mostly what we call evidence. He enumerates five kinds, viz. laws, witnesses, agreements, statements extracted by torture, and evidentiary oaths. (Rhetoric, I. 15.) These verbal distinctions are not to be found in the orators. Demosthenes often distinguishes μαρτυρίαι and τεκμήρια, the evidence of witnesses from that of circumstances. Between τεκμήρια and εἰκότα there is strictly this difference: the former are the evidentiary facts; the latter, the results which are obtained by combining such facts together and reasoning upon them.

value of evidence extracted by torture, I shall have something to say by and by. To the honour of the Athenians it should be mentioned, that this supposed test was not often resorted to; for the masters very rarely gave up their slaves, when they were demanded. But the demand was commonly made, with a view to draw an inference from the adversary's refusal, and so, in effect, to substitute assertion or defective argument for evidence. Thus, a man, who wanted to prove the contents of a lost agreement, demanded the examination of a slave whom he alleged to have written it out. The master refused: the challenging party commented upon the refusal, and argued that the slave would have proved his case if the master had let him. His mode of reasoning was in effect this—"I give no proof of my assertion, because I have none to give; I should have had proof, if the slave had been questioned; but my opponent would not allow it; therefore you must presume everything against him." This proof is defective under any circumstances; but there is no kind of foundation for it, unless it is shown that there was an agreement, that the slave wrote it out, and that he was still living and might have been examined. But it rather appears from a perusal of the Athenian orators, that they were in the habit of using this sort of argument without laying any foundation for it.

Before I pass from this topic, I have a few words to say on the subject of circumstantial evidence, upon which a good deal of misunderstanding has prevailed. We hear people say, how dangerous it is to convict on circumstantial evidence; and again we are often told, that circumstantial evidence is more to be depended on than direct. Let us see how the matter stands.

Direct is that which applies itself immediately to the principal fact in question; circumstantial applies itself mediately to the principal fact, and immediately to some fact evidentiary of the principal. Thus, if I say I saw the prisoner inflict the mortal wound on the deceased, this is direct evidence of the murder. But if several witnesses are called, one to prove that the prisoner bought the poison, one that he mixed it in a glass, one that he gave the glass to the deceased to drink, one that the deceased died soon afterwards; all this is circumstantial evidence of the murder.

Circumstantial evidence is in itself weaker than direct; for proof of the evidentiary fact cannot be so convincing as proof of the fact itself; but it often happens, owing to extrinsic causes, it is stronger.

Thus, if I saw the prisoner stab the deceased to the heart, my evidence is stronger to prove the murder, than if I entered the room and saw him standing over the deceased with the bloody knife in his hand. But if various circumstances are proved against the prisoner by different witnesses, as, that he had a quarrel with the deceased, that he had threatened to kill him, that he was in the same room with him a short time before the murder, that he was seen shortly after with marks of blood about his person, and that the knife with

which the murder was committed belonged to him; all these circumstances may be more convincing than my direct evidence, not because the circumstances themselves are precisely equivalent to the fact disclosed by me, but because they are better proved, the witnesses being more numerous, and the chances of error or deceit fewer. If three or four persons, instead of one, had witnessed the doing of the deed, this might turn the scale in favour of the direct evidence; and the same would be the result, if my evidence could be deemed perfectly credible in all respects. Confession (the strongest evidence of guilt) may be regarded as the direct testimony of one whom there is the least cause to disbelieve.

Wills, in his treatise on Circumstantial Evidence, defines it thus:

"On a superficial view, direct and indirect, or circumstantial, would appear to be distinct species of evidence; whereas these words denote only the different modes in which those classes of evidentiary facts operate to produce conviction. Circumstantial evidence is of a nature identically the same with direct; the distinction is, that by direct evidence is intended evidence which applies directly to the fact which forms the subject of inquiry, the *factum probandum;* circumstantial is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to or usually connected with some other fact as its accident, and from which such other fact is therefore inferred. A witness deposes that he saw A. inflict on B. a wound, of which he instantly died; this is a case of direct evidence. B. dies of poisoning; A. is proved to have had malice against him and to have purchased poison, wrapped in a particular paper; the paper is found in a secret drawer, and the poison gone. The evidence of these facts is direct; the facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed, and whether it was committed by A."

The difference between affirmative and negative evidence is commented on by Demosthenes in his defence of the witness Phanus: (ante, p. 130.) Aphobus had asked to have Milyas, a slave, examined. Demosthenes contends that he could not have given material evidence. "For"—says he—"what could Aphobus most desire him to say? That he is not aware of his having any of the property? Suppose he says so: does it follow that Aphobus has none? No; for I produced witnesses, who spoke to the affirmative from their own knowledge and eyesight. That some man knows something to be in his possession, is material evidence; but, that some one does not know it, is no evidence at all: there might be plenty of witnesses of that sort."

Here the reasoning of Demosthenes might be very good, as applied to the case before him; but the proposition which he lays down is an overstatement of the truth. The real question was, whether Milyas had an opportunity of knowing whether Aphobus had any of the property. Mere ignorance, unaccompanied with other circum-

stances, is undoubtedly no evidence at all. But where the negative witness had an opportunity of learning whether the fact was so or not, and where it is probable he would have known it if it was true, his evidence is worth something; and, as you increase this probability, in the same proportion you increase the value of his testimony. Thus, Demosthenes calls a person who sailed in the ship, to prove that there was no cargo of wine on board, and to contradict the adversary's assertion that there was one: (ante, p. 196.) Here the negative evidence might be almost, if not quite, as good as the affirmative.

A man's own conduct may have been such, that negative evidence throws great doubt upon, or even outweighs, his affirmative assertions. For example; if a man declares that he was attacked and robbed on his way home, but the members of his family declare, that he came home the same evening and never spoke a word to them about the matter, and no cause is shown for his silence, our belief in his assertion might be considerably shaken.

And sometimes a man's own acts are in the nature of negative evidence, tending to invalidate his positive testimony: as, if he demands a debt many years after it is alleged to have become due, and has never made any demand for it in the interval, when it might have been expected he would have done so: or, if he impeaches a transaction, which he never complained of at the time, having full knowledge of the circumstances. Objections of this kind are frequently made. (See ante, pages 207, 212, 247, 274, 286, 288.)

The necessity of evidence being relevant to the question is frequently urged by Demosthenes: (see ante, pages 99, 127, 278, 280, 285.) Yet he himself violates the rule, when it suits him, as do all the orators; and indeed it was impossible to prevent them doing it. Even with us, though evidence irrelevant to the issue is not admissible, it is difficult to restrain counsel in their speeches from travelling beyond the question. The water-glass was some check upon the Athenian speaker; but this was only when he had a good case, and could not afford to waste his time.

The relevancy, or the materiality, of evidence might become an important question in the Athenian courts, upon a proceeding against the witness for false testimony. Of this an example is furnished in the defence of Phanus: (see the Argument, ante, 120.) Aphobus sued Phanus for having given evidence, that he had confessed Milyas to be a freeman. The main question in the cause is, whether this evidence was true or false. But we see that Demosthenes (in his speech for the defendant) does not confine himself to this question, but endeavours to show that the evidence was immaterial to the decision of the cause between Aphobus and himself. We are naturally tempted to ask; was this a legitimate ground of defence? I have little doubt that it was so. The plaintiff seeks to recover damages; he is bound to show that the evidence of the defendant was injurious to him by the influence which it had upon the verdict. But it is equally clear

that, in order to raise this inference, very slight proof ought to be required on the part of the plaintiff. The moment he shows, that the defendant's evidence had even a remote bearing on the issue in the cause, he raises a presumption that he influenced the verdict. To rebut such presumption, the defendant ought to prove very clearly and satisfactorily, that his evidence was not material. In the case before us, the arguments of Demosthenes appear to me too weak to sustain this ground of defence. He shows, that Phanus was called to prove a collateral point only, and not one of the principal matters in the cause. But may not the proof of a collateral point have an important effect on the verdict? Every link in the chain of evidence is important, though it does not connect itself immediately with the ultimate question; and small and seemingly trifling matters often turn the scale with the jury. The object of calling Phanus was, to overthrow an argument of the adversary. Aphobus had demanded Milyas to be given up for the torture, alleging that he could furnish evidence against his master. Demosthenes refused to give him up, on the ground that he was a freeman, and alleged that Aphobus knew and had confessed him to be such. If Aphobus really knew this, the demand of Milyas and the argument founded upon its refusal were vexatious and fraudulent, and the proof of his confession might throw discredit upon his whole case. The evidence therefore of Phanus, so far from being immaterial, might have been (for aught that we can see) highly important to the issue. The strong point for Demosthenes was, that this evidence was true; but naturally enough he avails himself of every argument which the practice of his country allowed. In the cause against Stephanus, where Demosthenes was for the plaintiff, he condemns this line of argument, and thus cautions the jury against it:

"It would be a strange proceeding, when all had given false evidence, for each to prove who did the greatest injury, instead of showing his own evidence to be true. A witness ought not to get off by showing another to be more guilty, but by proving the truth of his own evidence."

We may collect from these two speeches, that it was the practice for all defendants in such actions to use the same argument; and plaintiffs often gave them cause for it, by selecting for attack some of the least important witnesses, while they took no measures against the rest. We may observe also, that however difficult it might be for a defendant, to show that his evidence was wholly immaterial, and thus entitle himself to a verdict, it was extremely important, with a view to reduction of damages, to prove the comparative insignificance of the testimony complained of.

How Demosthenes, in defending Phanus, was himself interested in the result, appears from what I have said in Volume III. pages 344, 394.

The Athenians were not without their precautionary rules to improve the quality of evidence, and guard against deception.

The rule, that all testimony should be put in the shape of a depo

sition, though it could not fulfil all the exigencies of judicial inquiry, was attended with some advantage. A deposition is less open to mistake than oral testimony; and the witness is more careful, when his evidence is in writing, because it furnishes an authentic record against him upon an indictment for perjury; though oral testimony has certainly more effect with a jury, for reasons which are obvious. The attendance of the witness at Athens to confirm his deposition had less effect, as he was not subject to cross-examination.

The importance of producing documents, when they were in existence, was understood by the Athenians, and is insisted upon by the orators: (see ante, 103, 113, 169.) And certain things were required to be in writing, as wills, mercantile contracts, and challenges. They had no rules of primary and secondary evidence, or notices to produce.

Hearsay evidence was inadmissible with them, as with us. To this rule we allow certain exceptions, which are necessary to justice; as dying declarations, statements of deceased members of the family in pedigree cases, traditionary reputation upon questions of boundary and other public rights. The Athenians allowed a still wider exception, viz. the declarations of all deceased persons. They, like us, permitted a hostile witness to be contradicted by proof that he had made a different statement at another time; of which we have seen an example in the case of Zenothemis.

While the Athenians rejected hearsay evidence, they either did not, or could not, prevent hearsay assertions by the speaker. Thus, Demosthenes, in the speech against Aphobus, tells the jury what his mother said about the contents of his father's will. And there are plenty of other instances.

The only case in which the attendance of the witness could be dispensed with was, when he was ill or out of the country. His evidence then might be received by persons deputed for that purpose. In like manner we send commissions to examine witnesses abroad.

Testimony was generally given upon oath, but not always nor necessarily, as it would seem,[1] though a friendly witness, who declined to be sworn, would have less credit with the jury. The oath was taken at an altar either in the magistrate's office, or in court; most commonly in the former. What form of words they used, we know not.

None but freemen could appear as witnesses: the rule excluded women, minors, and slaves. There was no incompetency on the ground of interest, nor for any kind of crime, unless it was followed by deprivation of the civic franchise. Disfranchised persons were considered to be hostile to the state, and therefore not to be trusted. We have seen how Demosthenes, in order to create a prejudice against

(1) Schömann takes this view. Platner confounds the oath of the witness with the voluntary one of the party, which was of a more solemn kind. That an oath was not indispensable to the giving of testimony, may be inferred from this, that an absent witness was allowed to depose without any such test. And the form *μαρτυρεῖν ἢ ἐξομνύειν* seems to show, that the hostile witness was only required to swear, if he adopted the latter alternative.

Midias, produces in court a person, whose evidence he could not put in, because Midias had by a trick caused him to be disfranchised. (Volume III. page 97.)

The parties could not give evidence for themselves, though they were at liberty to state their own cases to the jury, and a clever speaker might perhaps obtain credence without being supported by testimony. How far this operated in practice, we cannot say.

The interrogatories put by one party to the other, the evidence of slaves by torture, and the challenges to oaths, are subjects which, for the sake of convenience, I have thrown into distinct chapters.

Many ask—what need is there of any technical rules, or tests of admissibility? Why not allow all kinds of information to be received, just as you would in the common affairs of life? One kind of evidence is better than another; but why should any be excluded?

It cannot be denied, that the observance of strict rules in the examination of witnesses and the production of evidence leads often to an exclusion of truth and a denial of justice. An irregular inquiry will sometimes discover that which escapes the scrutiny of a regular one. There is sometimes abundant moral persuasion of a fact, of which there exists no legal proof. Many a prisoner has been acquitted after a confession of his crime, because that confession was improperly extorted and could not be given in evidence. An agreement, which has been committed to writing, is capable of being proved by parol, and perhaps by means equally satisfactory; yet this is not allowed, if the writing might have been produced. A statement, which the witness has received from one, in whose word he has good reason to place implicit confidence, is not suffered to be repeated in a court of law, because it is hearsay. These and the like inconveniences, the necessary consequence of adhering to general rules, have led some people to think that every species of proof ought to be admitted, the judge or the jury being left to form their own estimate of its value. On the other hand it has been urged in favour of rules of evidence, that it is impossible to remove every impediment to the course of judicial inquiry, without reposing in its managers a most dangerous discretionary power; that there is a necessity of guarding as well against the encroachment of the judge, as against the mental infirmity of the jury; that men are but too ready to jump to conclusions upon slight and insufficient grounds; that a bench of twelve men, taken not from the best educated portion of the community, may be very useful for certain purposes, but that its utility would be impaired, if it were too much exposed to the chances of error or the influence of prejudice; further, that the administration of justice should not only be pure, but generally believed to be so; and that nothing tends more to secure public confidence, than a steady observance of rules and principles, and a system of deliberate caution, throughout the whole of the judicial proceedings. Another argument is, that a contrary practice would lead to a loose and careless mode of transacting

business; which would produce an infinity of misunderstandings and disputes, and a vast increase of litigation. For example, written instruments would be of comparatively small value, if proofs of an inferior nature were generally admitted in their stead, or to contradict or explain them. Those safeguards, with which a prudent man may now effectually arm himself against the negligence and the dishonesty of his neighbours, would then afford but a precarious protection; he would still be exposed to the mercy of frail memories, conjecture, and falsehood. In criminal trials a latitude of discretion would be still more dangerous.

The latter view of the question, to which for many centuries the English law gave an undue prevalence, was thus expounded by Starkie in his treatise on evidence:

"The necessity for resorting to superior tests of the truth is founded on an apprehension, that the evidence, on which an individual in ordinary transactions might safely rely, could not without such tests be safely relied on in judicial investigations. In the ordinary business of life neither so many temptations, nor so many opportunities occur for practising deceit, as in the course of judicial investigations, where property, reputation, liberty, even life itself, are so frequently at stake. In the common business of life each individual uses his own discretion with whom he shall deal, and to whom he shall trust. He has not only the sanction of general reputation and character for the confidence which he reposes, but slight circumstances and even vague reports are sufficient to awaken his suspicion, and place him on his guard; and where doubt has been excited, he may suspend his judgment, till by extended and repeated inquiries doubt is removed. In judicial inquiry it is far otherwise. The character of a witness cannot easily be subjected to minute investigation. The nature of the proceedings usually excludes the benefit which might result from an extended and protracted inquiry; and a jury are under the necessity of forming their conclusions on a very limited and imperfect knowledge of the witnesses, on whose testimony they are called upon to decide.

"It has been justly observed, there is a tendency among mankind to speak truth, for it is easier to speak truth than to invent. It is equally apparent, the suspicion of mankind would usually depend on their ordinary experience of human veracity. Hence jurors would be inclined to repose a higher degree of confidence in ordinary testimony, than would be due to it in the absence of peculiar guards against deceit; for, as temptations to deceive by false evidence in judicial inquiries are far greater than in the ordinary transactions of life, they would be apt to place the same reliance on testimony offered to them as jurors which they would in ordinary cases, and would therefore in many instances overvalue it.

"The law therefore wisely requires, that the evidence should be of the purest and most satisfactory kind which the circumstances admit of, and warranted by the most weighty and solemn sanctions."

Notwithstanding these arguments, public opinion has gradually undergone a change in this country, and in the course of the last twenty years the rules of evidence have been considerably relaxed. The principal reforms which have been introduced are these—Witnesses are no longer rendered incompetent by their interest in the suit. The parties themselves may be examined as witnesses; and so may their wives; except in a few cases. One other improvement is much to be desired; viz. that a prisoner should be allowed to give evidence for himself upon his own trial.

APPENDIX VII.

INTERROGATORIES.

It has been stated, that in a cause at Athens either party was at liberty to put questions to the other, and to insist upon having them answered, both at the hearing before the magistrate and at the trial. The answers given before the magistrate were taken down in writing, and afterwards produced in evidence duly verified, if thought necessary. At the trial the questions were answered in the presence of the jury; they could only be put by the party who was addressing the court; for no man was allowed to interrupt the speech of his opponent. The jury however might at any time stop the speaker, and cross-examine him, either on matter of fact or argument; and the parties often requested the jury to exercise this right, and suggested the questions to be asked.

The following is an example from Isæus, (De Hagniæ hereditate, s. 4.)

The speaker calls up the guardian of the claimant, and desires him to state how he makes out his pedigree, at the same time having the law read, which pointed out the true course of inheritance: He proceeds thus:

"Now, as you are so clever at calumny and perversion of the laws, get up here. Usher, read the law." [The law is read.] "Stop. Let me ask you. Is the boy brother to Hagnias, or brother's son, or sister's son? Or is he a cousin, or son of a cousin by the father's or the mother's side? Which of these titles belongs to him, to which the law gives the right of succession? Don't tell me that he is my nephew: the question is not about my estate, for I am alive. If I had been deceased without issue, and he was claiming my property, it would have been proper to give that answer to the question But now you say, that a moiety of the estate of Hagnias belongs to the boy. You must establish that by his descent he is heir to Hagnias.

Show this to the jury—You see, that he can make out no relation ship; but his answers are anything rather than what you want to hear."

Such questioning was allowed at Athens in criminal as well as in civil proceedings. Thus Dinarchus interrogates Demosthenes on his trial for accepting the bribe of Harpalus:

"Did you frame this decree, Demosthenes? You did. You can't deny it. Did the Council receive authority by your delegation? It did. Have any of our citizens been put to death? They have. Was your own decree put in force against them? It is impossible for him to deny it."

The reader is referred also to Andocides on the Mysteries, 101, Edit. Bekker.

Lysias, on the trial of Eratosthenes, one of the thirty tyrants, calls him up and questions him:

"Did you take Polemarchus to prison, or did you not?"

"I obeyed the orders of the government, through fear."

"Were you in the council-room, when the discussion about us took place?"

"I was."

"Did you speak in favour of the motion for putting us to death, or against it?"

"Against it."

"To save our lives?"

"Yes."

"Thinking that we were unjustly treated?"

"Yes."

"Cruel man! you spoke to save my brother, and yet apprehended him for execution!"

Shortly after he says to the jury:

"Eratosthenes must show one of two things, either that he did not take him to prison, or that he took him lawfully. But he has confessed that he took him unlawfully; therefore your verdict becomes an easy matter."

The next example is also from Lysias. A corndealer is charged with the offence, which in our language is termed *engrossing*, and consists in the buying up large quantities of provisions, especially corn, with intent to resell them at a high price; against which, and the similar offence of *regrating*, there used to be severe and absurd penalties, now abolished. The prosecutor calls him up:

"Tell me, are you a resident alien?"

"Yes."

"Do you reside with intention to obey the laws of the state, or to do what you please?"

"To obey the laws."

"Ought you not to suffer death, if you do any illegal act for which death is the punishment?"

"I ought."

"Answer me now. Do you confess you bought up a greater quantity of corn than fifty bushels, which the law allows?"

"I bought by order of the Archons."

"Well, men of the jury; if he can show there is a law, which requires corndealers to buy up the corn because the Archons order them, acquit him. If he cannot show this, you are bound to convict him; for I have produced you the law, which declares, that no person in the city shall buy a greater quantity than fifty bushels."

That the accused should be entitled to examine the prosecutor, was of course highly just and proper, and would be allowed in all courts where justice is decently administered.

Socrates (in the defence written for him by Plato) avails himself of this privilege, by putting a series of questions in his own peculiar way to Melitus, the accuser. They are very amusing, but too long to be quoted here. Aristotle refers to them in his chapter on interrogatories: (Rhetoric, III. 18).

In England there was formerly no interrogating of parties except that of the defendant by the plaintiff in courts of equity; but now in the courts of common law parties may examine one another, just as they may give evidence for themselves. This does not extend to criminal cases, in which the accused party can never be interrogated; and even in a civil cause a witness may always object to answer a question, if the answer would tend to criminate himself. I expressed an opinion in the last chapter, that parties accused of crime should be permitted to give evidence for themselves as witnesses in their trial. It must be understood, that I would not make this examination compulsory. If they volunteer to give evidence, they would, as a matter of course, subject themselves to cross-examination; which men conscious of guilt would rarely do; the result would be, that the option of giving testimony would prove an advantage to the innocent, and a means of convicting the guilty. To shrink from the test, would of itself be some indication of guilt; to undergo it would generally lead to detection.

Again—while I would never force a man by threats, or induce him by promises, to criminate himself, I do not approve of the course which is so often adopted, and which originated in a mistaken humanity, of cautioning prisoners against saying anything to criminate themselves, and encouraging them not to plead guilty, when they are disposed to make confession. The discovery of truth is the chief thing to be attained. Let it be attained by any fair means. Let no temptation be held out one way or the other, either to confess or deny; but don't let a man's mouth be stopped, when he is willing to make disclosure of what he knows.

The importance of the subject induces me to annex the following written by myself in a weekly journal in March 1859:

"A bill has been brought into the House of Lords by Lord

Brougham, which, although it is likely to meet with some opposition, will, we doubt not, in due time become the law of the land. It is a bill to extend the Act of 1851, which enabled parties in civil cases to give evidence, to criminal cases, so that the accused party may, if he pleases, be examined as a witness. We consider that this change is urgently required, both as a measure of justice to the accused, and as an improvement in the administration of justice.

"The accused has a right to demand it, on the simple principle that every man is presumed to be innocent until he is proved to be guilty. If he has a right to be examined in a civil cause, why not on a criminal charge, when, by the hypothesis of the law itself, his character and credibility are not destroyed? True, his evidence would be open to some suspicion; it would be that of a strongly interested party; this however is an argument against its weight, not against its admissibility. Every interested witness is liable to the same observation. If all testimony was to be rejected but that which is wholly free from the suspicion of selfish motives, a very large proportion of the evidence, upon which courts of justice are in the habit of acting from day to day, would be excluded from them. The inconvenience, or rather the injustice, of such a practice had long been apparent to lawyers, when Lord Denman's Act was passed, which provided that the interest of a witness should be no ground of his exclusion. This Act led naturally to the Act of 1851, above referred to; and the measure now proposed is a just and necessary extension of the same principle.

"We contend for a positive right on the part of the accused, upon general grounds, irrespective of any hardship existing in particular cases. There are, however, many such cases of hardship. It often happens that a trial which assumes a criminal form is really nothing more than a cause between party and party; and to give the prosecutor the advantage of being heard upon his oath, while his adversary's tongue is tied, is contrary to the first principles of justice. Charges of perjury, conspiracy, false pretences, and many others, are examples of what we mean; in which a man complaining of some fraud practised upon him (perhaps after having failed in the assertion of his right in the civil court) invokes the aid of a criminal tribunal to punish the offender. For instance, a plaintiff in an action has lost the verdict by the testimony of two witnesses. He indicts them for a conspiracy. He and his witnesses are examined in support of the charge; the testimony of the defendants is excluded. But the jury on the former trial had heard them, and had believed them. Why should not the second jury have the same opportunity of hearing and believing? Why should not the second trial be conducted in the same manner as the first? Oh, because the first was a civil trial, and the second is a criminal! As if the proper way to investigate truth were not the same in both! According to our view of the matter, the prosecutor in such a case abuses the process of the law, in order to

obtain an unfair advantage; and the existing law of evidence favours the manœuvre.

"So much for the right of the accused party. But it is urged, that the conferring of such right would be injurious to criminals, because in every case where they declined to give evidence the jury would be prejudiced against them, and they would lose that 'benefit of a doubt' which, under the present system, turns the scale in their favour, whenever there is some mystery in a case which has not been fully cleared up. If the object of criminal trials were to mystify the judge and jury, or to enable clever criminals to escape, or clever counsel to help them in the attempt, we should assent to this argument; but, as we consider that the administration of the criminal law has for its object the elucidation of truth and the punishment of the guilty, we utterly and strongly dissent from it. Let us see how the thing works.

"Evidence is given against a prisoner, strong perhaps, but not entirely free from doubt. The prisoner, or his counsel for him, says, 'If I could give evidence, I could clear up the matter; I could give a full explanation.' Then why shouldn't he? The guilty man alone gains by silence; and he is precisely the person who ought not to gain. It may be said that the innocent has the 'benefit of the doubt,' as well as the guilty; but then he doesn't want it; he would rather give the explanation in open court, and have the opportunity of fully clearing his character at once, than walk out of court under the protection of 'the doubt.' Now let us take another case.

"Strong evidence has been adduced; strong enough to convict the prisoner, if believed. He has no means of refuting it but by giving his own testimony. An innocent man will desire to do so. By a plain unvarnished tale, he may give a totally different aspect to the affair. He is subject to cross-examination; but this, in the consciousness of innocence, he does not dread. That he should have the opportunity of telling his tale, is most important; and especially in a case of strong circumstantial evidence, where perhaps the only person who can explain the circumstances is the prisoner himself. A guilty man would not benefit by the opportunity, even if he availed himself of it; because he would shuffle, equivocate, prevaricate; his tale itself, as well as his whole demeanour, would strengthen the case against him; while, on the other hand, the honest man, answering promptly and candidly to every question, would obtain a deserved credence.

"There is nothing, therefore, in the objection but this, that some criminals shrinking from cross-examination, for fear the whole truth should come out, would by their own act create a reasonable prejudice against themselves; while others, taking the desperate chance (as they now frequently do) of saving themselves by an artful tale, would generally, by subjecting themselves to cross-examination, ensure their conviction. We can only say that these are results by no means to be deprecated.

"Lord Campbell said, the refusal of a prisoner to be examined would be taken as a confession of guilt, and the jury would always in such a case find a verdict against him. This would not be so. A sufficient amount of evidence would be required for conviction then, as it is now; and, whenever the evidence was not sufficiently strong, it would be the duty of the judge to direct an acquittal. But, when there is enough legal evidence to convict, we can see no reason for giving the accused the benefit of a doubt, which he himself has the power to clear up. The principle applies, of course, to every kind of charge, the more serious as well as the less serious; and when Lord Campbell urges as an argument against the bill, that it would extend to high-treason, he is only putting an extreme case, which does not alter the general question.

"It was objected that the proposed law was un-English, and borrowed from the French system. This sort of talk is often resorted to, for lack of more solid argument. If a thing be good, it is none the worse for being borrowed from the French; and if bad, it is not to be recommended by any example or any length of usage. The present bill, however, does not adopt the French system. In France the examination of the accused is compulsory. Lord Brougham proposes that it should be optional with him to give evidence or not, the same as in a civil cause.

"The English people have been slow to adopt changes in the law. So many absurdities have been tolerated for centuries, that we look upon the antiquity of a practice as a very slender recommendation for its continuance. It was not until the reign of William IV. that a person charged with felony was allowed to be heard by counsel. Since that time many important amendments have been made in the criminal law; and we trust that they will speedily be followed by this equally beneficial one, which Lord Brougham has just introduced."

APPENDIX VIII.

TORTURE.

Of the challenges to examine slaves at Athens, and the practice in relation thereto, enough has already been said. (See Volume III. Appendix IX. page 382, and this Volume, ante, pages 237, 369.) It is a remarkable thing, that, while all the orators agree in asserting, that torture was an infallible test of the truth, and that it was generally admitted to be far superior to that of ordinary testimony, yet the slaves were hardly ever given up to the question. This is to be attributed partly (no doubt) to the humanity of the Athenians,

and partly (I cannot help thinking) to a secret disbelief in the efficacy of the test. Did a man never offer his slave for examination, except when he was sure that he would give evidence in his own favour? Did a man never demand the adversary's slave, except when there was no risk that he would favour his master? The thing is somewhat strange. All the arguments turn upon the refusal to give up a slave. Why have we no example of conflicting comments by the Attic speakers upon the answers extracted from slaves?

Cicero, in the *Oratoriæ Partitiones* (34), advises how, when evidence taken by torture is put in, the topic should be handled by the party who produces it. Before I quote his words, let me observe, that he misstates the practice of the Athenians, who never applied the torture to freemen, to extract testimony from them in the ordinary course of law, but only on extraordinary occasions, to extort confession from persons charged with some high misdemeanour, or by way of punishment upon conviction.

"Sin quæstiones habitæ, aut postulatio ut habeantur, causam adjuvabunt: confirmandum genus primum quæstionum erit: dicendum de vi doloris, de opinione majorum, qui eam rem totam, nisi probâssent, certe repudiâssent; de institutis Atheniensium, Rhodiorum, doctissimorum hominum, apud quos etiam (id quod acerbissimum est) liberi civesque torquentur; de nostrorum etiam prudentissimorum hominum institutis, qui cùm de servis in dominos quæri noluissent, de incestu tamen et conjuratione, quæ facta me consule est, quærendum putaverunt. Irridenda etiam disputatio est quâ solent uti ad infirmandas quæstiones, et meditata puerilisque dicenda. Tum facienda fides, diligenter esse et sine cupiditate quæsitum; dictaque quæstionis argumentis et conjectura ponderanda."

In the early history of the Romans we find no traces of the torture: it was introduced during the republic, but was applied to slaves and foreigners only, upon charges of murder and personal violence. Slaves could not be tortured to prove charges against their masters, except in the case of incest (mentioned by Cicero), which was a crime against the Gods, or in such an extraordinary case as that of the Catilinarian conspiracy. Under the empire the use of torture was extended, and applied to freemen in cases of treason, though only to freemen of low degree: and thus the civil law expresses it—"milites, nobiles, senatores, decuriones, horumque liberi, non sunt torquendi." Cicero, notwithstanding what he says in the passage above quoted, speaks differently of the torture, Pro Sullâ, 28; there he argues upon its fallacy and uncertainty—"Quæstiones nobis servorum ac tormenta accusator minitatur: in quibus quanquam nihil periculi suspicamur; tamen illa tormenta gubernat dolor, moderatur natura cujusque tum animi, tum corporis; regit quæsitor, flectit libido, corrumpit spes, infirmat metus, ut in tot rerum angustiis nihil veritati loci relinquatur. Vita Sullæ torqueatur: ex eá quæratur, num quæ occultetur libido, num quod lateat facinus—Nu

lum in hâc causâ testem timemus: nihil quenquam scire, nihil vidisse, nihil audisse, arbitramur." Even the civil law, which authorises and directs the application of judicial torture, speaks of it doubtfully as a means of discovering truth. "Evidence obtained by torture"—says the Digest, lib. 48, tit. 18—"is to be received with caution; it is not always to be trusted, nor is it always to be disbelieved; it is at best but a deceitful and dangerous instrument, and very often fails to elicit the truth; for many persons are gifted with such a patience or power of enduring torments, that the truth cannot by this means be pressed out from them, while in others there is such a faintness of heart, that they will tell any kind of falsehood rather than undergo the torture; and thus it often happens, that the latter kind of persons will, from dread of pain, tell all manner of fables, not only falsely accusing themselves, but bringing other innocent persons into suspicion and danger." The commentators upon the civil law in various countries have spoken of it in similar terms.

To show how inefficient it is as a means for the attainment of truth, numerous authentic instances are recorded, both in ancient and modern times, of false accusations and false confessions made under torture. Tacitus relates, that when Octavia, the wife of Nero, was falsely charged by a concubine of the emperor with adultery, her female attendants were put to the torture, and some of them, overcome by pain, allowed the truth of the charge, while the majority persisted in maintaining the chastity of their mistress. (Annal. XIV. 60.) Heineccius mentions a remarkable instance of a German soldier, charged with robbing his officer, who was repeatedly tortured, in order to discover what had become of the stolen property, and who under torture accused himself and others of many crimes, and even murders, which had never been committed. (Exercitatio de Religione judicantium circa reorum confessiones.) Shortly before the French Revolution the Parliament of Paris suspended two judges, who had ordered the execution of a man for the alleged murder of a woman, proved only by his own confession under torture; the woman being found alive after the execution of the supposed murderer.

Rushworth tells us in his Collections (I. 638), that when Felton, who stabbed the Duke of Buckingham, was brought before the Council, he confessed the murder, and was then urged to confess who had set him on to do it, and he was asked whether the Puritans had not had a hand in it. He denied this, and declared to the last that he had no accomplice, and that he had revealed his intention to no man living. Bishop Laud, who was at the Council-table, told him, if he would not confess, he must go to the rack. Felton replied: "if it must be so, he could not tell whom he might nominate in the extremity of torture, and, if what he should then say must go for truth, he could not tell whether his lordship (meaning the Bishop of London), or which of their lordships he might name, for torture might draw unexpected things from him." He was not put to the

torture; for it appeared there were no grounds for supposing that he had any confederates.

Notwithstanding the cruelty of the practice—notwithstanding that it has been disapproved and condemned by all enlightened men in Christian countries, and by many even in ancient times—history tells the melancholy tale, that torture has been used as a means of extorting evidence and confession in all ages, and has not been wholly discontinued in Europe until the present century.

Jardine in his Reading "On the use of torture in the criminal law of England," has shown by extracts from the Council books, that in the reigns of the Tudor family and the two first of the Stuarts torture was constantly used in the investigation of offences, at the discretion of the Sovereign and the Privy Council; nor was it confined to State offences, or those pertaining to religion, but was applied also to ordinary crimes, such as murder, robbery, embezzlement, &c., and no question was ever made of its legality. It is true, that the application of torture either to criminals or witnesses was contrary to the common law of this country; so it is expressly laid down by Fortescue, Coke, and many other distinguished jurists; and Grotius in one of his Epistles cites England as an example of a country, "where people might live in safety under the laws without the use of torture." But it is not less true, that torture, though opposed to the genius and principles of our common law, and indeed expressly contrary to Magna Charta, was a practice adopted and exercised by regal authority, and was handed down by a course of precedents as an unquestionable prerogative of the Crown.

It appears to have been most commonly applied to accused parties, with a view to extort confession of guilt and disclosure of accomplices; but sometimes also it was applied to innocent persons, suspected of having a knowledge of the guilt of others; as when the Duke of Norfolk was accused of conspiring with the Queen of Scots, a warrant was issued to Sir Thomas Smith and Dr. Wilson, a Master of Requests, commanding them to examine Barker and Bannister, servants of the Duke, "and, if they should not confess plainly their knowledge, to cause them to be brought to the rack; and, if they still refused to confess the truth, then to cause them to be put to the rack, and to find the taste thereof until they should deal more plainly." This warrant was under the Queen's signet, and in the handwriting of Lord Burleigh. Sir Thomas Smith, who was himself averse to torture, writes to Lord Burleigh in answer—"To-morrow we intend to bring a couple of them to the rack, not in any hope to get anything worthy that pain or fear, but because it is so earnestly commanded to us."

Hume in his History of England (V. 457), notices this cruel exertion of prerogative in Elizabeth's reign, not only by her own Privy Council, but by the Council in the Marches of Wales, who were empowered by their commission to use torture whenever they

thought proper. (Compare Hallam's Constitutional History, I. 201, 204. II. 11.)

Sherwood, a Catholic, committed in 1577 by the Ecclesiastical Commissioners for hearing a mass, had made a confession which was construed to imply that the Queen, as a heretic, had no title to the crown. The Attorney-General was directed to examine him, and draw from him the names of other persons who held similar doctrines, and from whom he had got his belief; and the Lieutenant of the Tower was ordered to place him in the Dungeon among the rats, "if he did not name them willingly." This "Dungeon among the rats," was a cell in the Tower below high-water mark, totally dark, and into which, as the tide flowed up, innumerable rats, that infested the muddy banks of the Thames, were driven through the orifices of the walls. Instances are related of prisoners, from whose arms and legs the flesh had been torn during sleep by the voracity of those animals. Sherwood's courage having withstood the horrors of this dungeon, a warrant was issued authorising the Lieutenant of the Tower, the Attorney-General, the Solicitor-General, and the Recorder, "to assay him at the rack." This failing to shake his constancy, he was sent to be executed for high treason.

In the reign of Henry the Eighth Sir William Skevington, a lieutenant of the Tower, immortalised himself by the invention of a new engine of torture, called Skevington's irons, afterwards known by the name of Skevington's daughters, and corrupted into "the Scavenger's daughter." We are not (it seems) to confound this with a rack which, Coke tells us, was brought into the Tower in the reign of Henry VI. and called the Duke of Exeter's daughter. (III. Institute, 35.) The former is thus described, and its operations distinguished from that of the rack, in Tanner's History of the Jesuits; cited by Jardine:

"Præcipuum torturæ post equuleum Anglis species est, Filia Scavengeri dicta, priori omnino opposita. Cùm enim ille membra, alligatis extractisque in diversa manuum pedumque articulis, ab invicem distrahat; hæc e contra violenter in unum veluti globum colligat et constipat. Trifarium hic corpus complicatur, cruribus ad femora, femoribus ad ventrem appressis, atque ita arcubus ferreis duobus includitur, quorum extrema dum ad se invicem labore carnificum in circulum coguntur, corpus interim miseri inclusum informi compressione pene eliditur. Immane prorsus et dirius equuleo cruciamentum; cujus immanitate corpus totum ita arctatur, ut aliis ex eo sanguis extremis manibus et pedibus exudet, aliis, ruptâ pectoris crate, copiosus e naribus faucibusque sanguis effundatur."

This engine is noticed in the Journal of the House of Commons of 14th May, 1604. A committee had been appointed to inquire into the state of a dungeon in the Tower called "Little Ease;" and they reported that this engine, called "Skevington's Daughters," was

found in Little Ease, and that the place itself was very loathsome and unclean.

Another English instrument of torture was called "the manacles," which was used in Bridewell, and is mentioned in a warrant of Council, "to examine Eustace White, a seminary priest, and Brian Lassy, a distributor of letters to papists, and, if they refuse to answer directly, to put them to the manacles, and such other tortures as are used in Bridewell." After this it became in common use. It seems to have operated by compressing the neck towards the feet. Jardine thinks that Shakspeare alludes to it in the Tempest, Act I. Sc. 2—

He's a traitor:
I'll manacle thy neck and feet together.

The case which I am about to mention affords proof, that the Privy Council assumed an authority to award compensation, where a person had been put to the torture upon a false charge. We have seen (ante, p. 238,) that at Athens the *βασανιστὴς*, or questioner, was sometimes by special agreement empowered to estimate the damage which the master might sustain by the questioning of his slave. This may have operated in some measure to check the use of torture, and to mitigate its cruelty. That the occasional awarding of compensation, where the torture failed to establish guilt, would check the practice as it was carried on in England, can hardly be for a moment supposed.

One William Monke was charged in 1626 with treasonable conduct, and put to the torture. The warrant was directed to the Lieutenant of the Tower, a serjeant-at-law, and two clerks of the Council, authorising them to examine him, and "to use the manacles to him if in their discretion they should think it fit." It appears that nothing was proved against him; but in the following year he presented a petition to the Lords of the Council, of which there is a record in the Council register, stating—"that he by the malicious practice and accusation, tending to high treason, of one John Blackburn and his wife, had been imprisoned in the Tower of London, and there tortured upon the rack, and had been thereby utterly disabled to maintain himself, his wife and nine children depending on his labour—that the same being discovered, the petitioner had been set at liberty, and a warrant granted from the Board for the apprehending of the said accusers, who, out of a conscience of their guilt, were fled and could not be found—that the said accuser, John Blackburn, was possessed of lands and other profits, out of which the petitioner humbly sought to be relieved." It goes on to state that the Lords of the Council, in consideration of the petitioner's sufferings and distressed state, and to the end that he might have some means and relief assigned to him out of the said John Blackburn's estate, directed an inquiry to be made as to the situation and extent of the property alleged to belong to him, and then assigned a part of it to the petitioner by way of compensation.

Dr. Abbott, a chaplain of James I, afterwards Bishop of Salisbury, who wrote a tract to prove Father Garnet's connexion with the Gunpowder Plot, describes it as being the common course with the Commissioners appointed to inquire into State offences to use torture—"speciales delegati confessiones scelerum vel interrogatis eliciunt, vel argumentis et testimoniis evincunt, vel, ubi opus est, tormentis exprimunt." In the investigation of the Gunpowder Plot itself there is some uncertainty how far the torture was used; though it appears that a warrant was issued in the king's own hand, authorising the Commissioners to examine Fawkes upon the rack, "using the gentler tortures first, *et sic per gradus ad ima tenditur*." Catholic writers assert that many of the witnesses in this affair were put to the question; and a dreadful case is related of Nicholas Owen, a confidential servant of Father Garnet, who was examined in the Tower, and at first denied all knowledge of his master; this being a manifest falsehood, he was brought up again, and one of the king's gentler species of torture was applied to him; his thumbs were tied together, and he was suspended by them from a beam, while the questions were repeated. He then confessed his knowledge of Garnet and his attendance upon him, but insisted that he had nothing more to disclose, upon which he was threatened with the rack on the following day: in the meantime he contrived to get a knife, and ripped open his belly. (Jardine, page 47.)

The last recorded instance of the application of torture in England is the case of one Archer, a glover, supposed to have been concerned in a tumultuous attack upon Archbishop Laud's palace at Lambeth. He was racked in the Tower, to make him confess his accomplices. The warrant for his examination was given under the king's signet, addressed to the Lieutenant of the Tower, directing him, in conjunction with two king's serjeants, to take the prisoner to the rack, and "if upon sight of the rack he does not make a clear confession, to cause him to be racked as in their discretions shall be thought fit."

To the use of torture by royal prerogative the Commonwealth put a final termination in England. Torture however continued to be used in Scotland, partly under the authority of the civil law, which then prevailed, and partly as an irregular and occasional practice. (See Hume, VIII. 55. Burnet, I. 212.) The thumb-screw, the boot, and other such instruments, were employed against the Covenanters during the days of terror in the reign of Charles II, which have been rendered familiar to us by the romance of Sir Walter Scott. After the Union however such things were put an end to. The 7th Anne, c. 21, s. 5, enacts: "that no person accused of any capital offence or other crime in Scotland shall suffer or be subject or liable to any torture: provided that this act shall not extend to take away that judgment which is given in England against persons indicted of felony who shall refuse to plead or decline trial."

The judgment referred to in the last proviso was the *peine forte et dure*, a species of torture of an exceptional nature certainly, yet prescribed, not by the royal prerogative, but by the ordinary law of England. It was a judgment pronounced against a prisoner who, on an arraignment for felony, stood mute and refused to plead, and was in the terms following:

"That the prisoner should be remanded to prison, put in a low and dark chamber, and laid naked on his back; that there should be placed on his body as great a weight of iron as he could bear, and more; that he should have no sustenance, save only on the first day three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison door; and in this situation that such should be his daily diet till he died."

Blackstone distinguishes this extraordinary penance from the rack or question, because (says he) "*this* was only used to compel a man to put himself upon his trial, *that* was a species of trial in itself." And he excuses it in some measure by saying, that "it was a judgment purposely ordained to be exquisitely severe, that by that very means it might be rarely put in execution." (Commentaries, IV. 325.) Upon this there is an interesting note by Christian; which I need not apologise for quoting:

"Aulus Gellius with more truth has made the same observation upon the cruel law of the Twelve Tables, *De inope debitore secando*: 'eo consilio tanta immanitas pœnæ denunciata est, ne ad eam unquam perveniretur:' for he adds: 'dissectum esse antiquitus neminem equidem neque legi neque audivi.' But with respect to the horrid judgment of the *peine forte et dure*, the court could exercise no discretion, and show no favour to a prisoner who stood obstinately mute. And in the legal history of this country there are numerous instances of persons, who have had resolution and patience to undergo so terrible a death, in order to benefit their heirs by preventing a forfeiture of their estates, which would have been the consequence of a conviction by verdict. There is a memorable story of an ancestor of an ancient family in the north of England. In a fit of jealousy he killed his wife, and put to death his children who were at home, by throwing them from the battlements of his castle; and proceeding with an intent to destroy his only remaining child, an infant nursed at a farm-house at some distance, he was intercepted by a storm of thunder and lightning. This awakened in his breast the compunctions of conscience. He desisted from his purpose, and, having surrendered himself to justice, in order to secure his estate to this child, he had the resolution to die under the dreadful judgment of *peine forte et dure*."

This horrid practice continued to be a disgrace to our law till the twelfth year of the reign of George III, when it was enacted, that a person arraigned of felony, who stood mute, should be convicted of the offence charged. It is evident, that the more humane and just

course was, to construe the silence of the accused as a plea of not guilty, rather than a confession; and at length this view was adopted, and the 7th and 8th George IV, c. 28, directs that, when the prisoner stands mute of malice, or will not directly answer to the charge, a plea of not guilty may be entered for him by order of the court.

That the practice of using torture in England was derived from the civil law, appears not only from the absence of any sanction by the common law, but from several other circumstances—as, from the appointment of a Master of Requests, who was a civilian, to be present at the examination—from the recital in the earlier warrants of the "vehement suspicion" of guilt, which was originally considered necessary, and which corresponds to the *indicia torturæ*, amounting to the *semiplena probatio*, required by the civil law—also from the custom of bringing the party to the rack, to put him in fear of it, before it was applied, the same distinction which existed between the *territio* and *tortura* of the civilians It is further to be observed that there is no instance in our country of the application of torture to persons of noble blood, which agrees with the Roman law. Sir Edward Coke reports it to have been agreed in the Countess of Shrewsbury's case, that "it was a privilege which the law gives for the honour and reverence of the nobility, that their bodies are not subject to torture *in causâ criminis læsæ majestatis.*" (12 Reports, 96.)

It should be mentioned in justice to the civil law, and to those who administered it, that the torture was resorted to by them not in any spirit of inhumanity, but from an overabundant anxiety to obtain sufficient evidence in capital charges, and a distrust in ordinary testimony, unless it were well confirmed, not very dissimilar to that which the Attic orators represent to have been the feeling of their countrymen. Nor was the exercise of this dangerous power left to the arbitrary discretion of the judges and magistrates under the Roman law; but they were bound by the letter of their code to use it with certain limitations, and under definite rules: they could only apply the torture on their individual responsibility: if they used it improperly, or on an occasion which did not justify its application, the offence was capital by the letter of the law, and they were liable to make full compensation to the injured party. In England, on the other hand, its use was arbitrary and unrestricted, for the very reason that it was not sanctioned by the law of the country. There was no rule of law to guide those who applied it, nothing but the will of the crown, which was superior to law, and which transfused its spirit into the minds of those who executed its warrants.

Blackstone, who draws a contrast between the English and the Roman law to the advantage of the former, but says very little of the superseding of law in England by royal prerogative, observes in relation to the use of torture: "it seems astonishing that this usage should be said to arise from a tenderness to the lives of men; and

yet this is the reason given for its introduction in the civil law, and its subsequent adoption by the foreign nations; viz. because the laws cannot endure that any man should die upon the evidence of a false or even a single witness; and therefore they contrive this method, that innocence should manifest itself by a stout denial, or guilt by a plain confession: thus rating a man's virtue by the hardiness of his constitution, and his guilt by the sensibility of his nerves."

The scruples of the civil law in regard to testimony are assigned in an ancient statute, the 27th of Henry VIII, chapter 4, as a reason for changing the mode of trying certain offences. It recites "that pirates, thieves, robbers, and murderers upon the sea, many times escape unpunished, because the trial of their offences hath heretofore been ordered before the Admiral, or his lieutenant or commissary, after the course of the civil law, the nature whereof is, that, before any judgment of death can be given against the offenders, either they must plainly confess their offence, (which they will never do without torture or pains,) or else their offences be so plainly and directly proved by witnesses indifferent, such as saw their offences committed, which cannot be gotten but by chance at few times, &c."—and then it enacts, that such offences shall be tried under the king's commission directed to the lord admiral, &c., according to the course of the common law.

The practice of torture, together with the other procedure of the civil law, passed into the judicial system of most European countries, and continued to form a part of it until a recent period.

In France the *Question préparatoire,* which was used in order to enforce confessions where strong presumptive evidence of guilt was not thought sufficient to warrant capital punishment, was first forbidden by a decree of 24th August, 1780; and by a law of 9th October, 1789, torture was entirely abolished throughout the French dominions. In Russia the use of torture in judicial inquiry was first interrupted by a recommendation of the Empress Catherine in 1763; and its final abolition as a part of the Russian law was effected by an imperial ukase in 1801. In the middle of last century it was prohibited in Prussia, Saxony, and Austria; but not in other German states till the present century. For instance, in Bavaria and Wurtemburg it was first suspended by ordinances in 1806, in Hanover in 1822, and in the Duchy of Baden in 1831. The inquisitorial tribunals of Spain and Italy have been slow and reluctant to abandon a practice so congenial to their institution.

APPENDIX IX.

OATHS.

The manner of taking oaths in ancient times and modern, the origin of the practice, its use, intent, and purpose, are the subjects of this appendix.

The definition of an oath, as given by Paley, is this—"it is the calling upon God to witness, *i. e.* to take notice of what we say, and invoking his vengeance, or renouncing his favour, if what we say be false, or what we promise be not performed."

The forms of oaths, like other religious ceremonies, have been various; but they have generally consisted of some bodily action, accompanied by a prescribed form of words. The bodily action has commonly been the touching of something sacred, with a view to confirm the sanctity of the appeal. I shall show how this ceremony came to be adopted, and in what its efficacy is supposed to consist. First let me observe that the common expression *corporal oath* is not derived from the bodily action which accompanies it, that (namely) of laying the hand on the bible; but, as Paley tells us, is borrowed from the ancient usage of touching the *corporale*, or cloth which covered the consecrated elements.

The primary idea in swearing is, that you call the Deity to witness the truth of what you say; and in so doing you invoke him to come near you, or to be present while you take the oath, as Abraham did, when lifting up his hand to heaven he swore an oath to the King of Sodom. The holding up of his hand was a pointing to the supposed residence of the Deity. Afterwards, when men came to use idols and symbols to represent the Deity, they used to touch these while in the act of swearing, and supposed that by so doing they made him present at the oath, just as Jupiter actually was present, when Vesta, touching his head, (in Homer's hymn,) takes the oath which the poet's lines express:

Touching the head of Ægis-bearing Jove
A mighty oath she swore, and hath fulfilled,
That she among the Goddesses of heaven
Would still a virgin be.

The heathen nations generally touched the altar of the God by whom they swore, and the sanctity of the oath depended much on the particular God who was appealed to. For each nation had a favourite deity, as the Carthaginians, Juno; the Ephesians, Diana; the Tyrians, Hercules; and also favourite temples, rites, forms, and other appendages of religion. The ceremony is described in a passage in Plautus thus:

G. Tange aram hanc Veneris. L. Tango.
G Per Venerem hanc jurandum est tibi.

Thucydides tells us, that at the peace of Nicias it was stipulated that each of the belligerent powers should swear the most solemn oath according to the custom of their country.[1] In Virgil's twelfth Æneid, where king Latinus swears to the treaty made with the Trojans before the single combat of Æneas and Turnus, he stands by the altar and performs this ceremony; as the reader will see by Dryden's translation, which I quote:

> I touch the sacred altars, touch the flames,
> And all these powers attest, and all their names;
> Whatever chance befal on either side,
> No term of time this union shall divide;
> No force nor fortune shall my vows unbind,
> Or shake the stedfast tenor of my mind.

The touching of the altar was often accompanied with other rites, as libation, burning of incense, or sacrifice. The immolation of full-grown victims gave peculiar sanctity to the oath of a Greek.[2]

A military oath is described by Æschylus in the play of the Seven Chiefs:

> Over the hollow of a brazen shield
> A bull they slew, and touching with their hands
> The sacrificial stream, they called aloud
> On Mars, Enyo, and bloodthirsty Fear,
> And swore an oath, or in the dust to lay
> These walls, and give our people to the sword,
> Or perishing to steep the land in blood.

We read of Scythians and other barbarous people cutting their fingers, pouring the blood into a cup, and tasting it, to cement a compact of friendship or alliance. The Saxons and other German tribes swore by their arms, and punished the false swearer by cutting off the hand that bore them.

The fire ordeal of the middle ages had its origin in a ceremony, of which mention is made at a very early period. Demosthenes in the action against Conon, (where there are some good observations on the subject of oaths,) speaks of those who walked through fire in order to sanctify their oaths. And in the Antigone of Sophocles the messenger, who brings tidings of the burial of Polynices, says:

> Ready were we to grasp the burning steel,
> To pass thro' fire, and by the Gods to swear,
> The deed was none of ours, nor aught we knew
> Of living man, by whom 'twas plann'd or done.

Compare Virgil, Æneid XI. 785.

An Athenian witness was sworn at an altar belonging to the deity who presided over the courts of justice; the hero Lycus, namely; or Apollo, according to Müller. The evidentiary oath, or wager of law, being attended with more important results, as I have elsewhere shown, the swearing of it was accompanied with greater solemnity. If the party swore by his children, he made them stand before him,

(1) ἐπιχώριον ὅρκον τὸν μέγιστον. Thucyd. v. 47.
(2) Hence ὀμό[illegible]αθ' ἱερῶν τελείων.

and then, laying his hand upon their heads,[1] pronounced a curse upon them if he swore falsely. If he had no children, he would imprecate destruction upon himself and his whole race, and add force to his words by touching the holy victims.

The oath by the children was the most solemn of all. A peculiar power was attributed to the parental curse. It was at once productive and prophetic of the evil which it prayed for. Polynices, in the play of Sophocles, ascribes his expulsion from Thebes to the Fury of his father; and, when his father has cursed him, Antigone asks, who will dare to follow him to the war after the prediction of Œdipus? Nor has this notion been confined to ancient times. The curse of Lear upon Goneril seems to carry with it its own fulfilment.[2]

A singular rite occurs in the history of the patriarchs Abraham and Jacob. Abraham says to his servant (Genesis, c. XXIV.):

"Put, I pray thee, thy hand under my thigh; And I will make thee swear by the Lord, the God of Heaven and Earth, that thou shalt not take a wife unto my son of the daughters of the Canaanites, among whom I dwell;

"But thou shalt go unto my country, and to my kindred; and take a wife unto my son Isaac."

Jacob makes Joseph perform the same ceremony when he promises to carry him out of Egypt and bury him in the burying-place of his fathers. According to some commentators, this was equivalent to swearing by the Messiah, who was to spring from the loins of Abraham.

The Jews of a later age touched the book of the law, or their phylacteries, upon which extracts of the law were written. When Christians kiss the Bible, or lay their hands upon the cross or relics in taking an oath, or when Mahometans do the same upon the Koran, we recognise at once the source from which their practice has been derived. Some persons may be disposed to think that the custom smacks of idolatry; some may think, that, even if it does, it is one of an innocent kind. It is not my intention to pronounce any opinion upon such a question. My wish is simply to draw attention to the historical facts connected with the subject. It is curious indeed to observe how the rite which we have been noticing has found its way into some of the every-day practices of life. Thus, the hand has always been considered sacred to faith, and hence to grasp the hand of a person, to whom a promise was made, was to give a pledge of faith. This is kept up at the present day; and hence we say "to clench a bargain." In the same way the eye was sacred to Love;

(1) This is the exact meaning of *ὀμνύναι κατὰ παίδων* or *καθ' ἱερῶν*, and is the origin of the expression *κατ' ἐξωλείας ὀμνύναι.*

(2) This is one of the most affecting scenes in the whole of Shakspeare Sophocles fails to excite our sympathies in favour of Œdipus, because the wrongs done him by his son are not brought before our eyes: they are narrated, not dramatized. The suppliant address of Polynices disarms our wrath, and makes the curse seem revolting.

and therefore the lover used to touch and swear by the eyes of his mistress, and she often by her own, as in Propertius:

> Viles isti videantur ocelli,
> Per quos sæpe mihi credita perfidia est.

It is specially worthy of notice, that God, that is, the true God, swears by Himself, because he can swear by none greater. See Hebrews, chap. VI.; Genesis chap. XXII.; and Milton's Paradise Lost, bk. V.

> Your head I him appoint,
> And by myself have sworn; to him shall bow
> All knees in heaven, and shall confess him Lord.

It is in this spirit that Juliet, in the excess of her devotion to Romeo, exclaims:—

> Do not swear at all,
> Or if thou wilt, swear by thy gracious self,
> Which is the God of my idolatry,
> And I'll believe thee.

The early Greeks attached the utmost sanctity to the obligation of an oath, and had a firm belief that an oath-breaker would be punished both in this world and the next. Pindar places those who kept their oaths in Elysium, while those who broke them were in torment. In the Frogs of Aristophanes, Bacchus asks Xanthias, when they are in the infernal region:

> What lies beyond there?
> X. Mire and darkness.
> B. See you the parricides and oathbreakers
> Of whom he told us?

However the Greeks may afterwards have degenerated, the opinion of the moralist respecting perjury continued to be the same; as we may see indeed from the orators, who, while they are constantly accusing their adversaries of false swearing, always speak of the offence as one of a most odious character.

It has often been observed, that the frequency of oaths, and the habit of administering them on light and trivial occasions, tend to weaken their effect, and to diminish their sacredness in the minds of the people. Frivolous swearing amounts to that taking of God's name in vain, which is so solemnly forbidden. Paley recommended long ago, that declarations, attended with penal consequences in case of falsehood, might in many cases be substituted for oaths with advantage. And this recommendation has been to a considerable extent adopted. There are some who would go further, and abolish oaths altogether, at least all official and judicial oaths. Such was the advice of that acute but eccentric man, the late Jeremy Bentham; who, writing on the subject of oaths, pronounces them to be useless, and worse than useless. Without pronouncing any opinion of my own, I shall give my readers an opportunity of judging of his arguments:—

"The supposition of an oath's efficiency is absurd in principle. It ascribes to man a power over his Maker. It places the Almighty in

the station of a sheriff's officer, under the command of every justice of the peace. It supposes him to stand engaged, no matter how, but absolutely engaged, to inflict on every individual by whom the ceremony has been profaned a punishment, which (but for the ceremony and the profanation) he would not have inflicted.

"Either the ceremony causes punishment to be inflicted by the Deity in cases where otherwise it would not have been inflicted, or it does not. In the former case, the same sort of authority is exercised by man over the Deity, as that which in English law is exercised over the judge by the legislature, or over the sheriff by the judge. In the latter case, the ceremony is a mere form, without any useful effect whatever.

"Under the ceremony of an oath are included two very different ties, the moral and the religious. The one is capable of being made more or less binding upon all men; the other upon such only as are of a particular way of thinking. The same formulary which undertakes to draw down upon a man the resentment of the Deity in case of contravention, does actually, in the same event, draw down upon him the resentment and contempt of mankind. The religious tie is that which stands forth, which makes all the show, which offers itself to view; but it is the other tie that does by far the greatest part of the business.

"Applied to judicial testimony, if there be an appearance of its exercising a salutary influence, it is because this supposed power acts in conjunction with two real and efficient ones; the power of the political sanction, and the power of the moral or popular sanction. When, to preserve a man from mendacity, he has, in addition to the fear of supernatural punishment, the fear of fine, imprisonment, or pillory, on the one hand; the fear of infamy, the contempt and hatred of all that know him, on the other; it is no wonder that it should appear powerful. Strip it of these accompaniments, deprive it of these supports, its impotence appears immediately.

"In certain cases the tie of an oath is seen to have a powerful effect upon mankind. In what cases? Where the force of public opinion acts under its command; where it employs itself in insuring the veracity of witnesses in courts of justice. In other cases oaths are cobwebs, or (at best) hairs. In what? In all in which the force of public opinion runs counter, or withholds its aid; in the case of jurymen's oaths in a variety of instances;[1] in the case of various other offices; in the case of university oaths, custom house oaths, and subscriptions.

"It was in the earliest stages of society, that this, together with so many other articles in the list of supernatural securities, or sub-

(1) He alludes to such cases as these: where some of the jury give up their opinions to the rest, in order to agree upon a verdict, which must be unanimous; or where they acquit a guilty prisoner, in order to save him from a cruel punishment; or wherever they find a verdict manifestly contrary to law and to the evidence, in order to do what they consider substantial justice.

stitutes for testimonial veracity, took their rise—ordeals in all their forms; trials by battle; trials without evidence (understand human evidence;) trials by supernatural, to the exclusion of human, evidence; trials by evidence secured against mendacity by supernatural means, by the ceremony of an oath.

"As the powers of the human understanding gain strength, invigorated by nourishment and exercise, the natural securities rise in value, the supernatural, understood to be what they are, drop, one after another, off the stage. First went ordeal; then went duel; after that went, under the name of wager of law, the ceremony of an oath in its pure state, unpropped by that support which this efficient security receives at present from those efficient ones which are still clogged with it; by and bye, its rottenness standing confessed, it will perish off the human stage; and this last of the train of supernatural powers, *ultima cœlicolûm*, will be gathered like Astræa into its native skies."

Without attempting to answer the above, I will only observe, as the result of my own experience, that oaths operate very differently upon different persons. Many take them as a matter of business, and are not much affected by them. Some appear to have a sense of their obligation, others pretend to have; and among the former class, there are those that have a religious, and those that have a superstitious veneration for the ceremony. Let any one attend in a court of justice, and watch the demeanour of the various witnesses as they come to the box to be sworn, and especially at the moment when they kiss the book. The sight is both amusing and instructive. Some will kiss the book reverently, some with an affectation of reverence, as if to impress the court with a great idea of their regard for an oath. Others take it up carelessly, as if to show their contempt for the practice, or their indifference to the matter at issue. Occasionally you will see persons raise the sacred volume near to their lips, and pretend to kiss it, while they kiss only the empty air, their object seemingly being to escape from the obligation which the ceremony is thought to impose; and such persons are sometimes reproved by the judge, and desired to salute the book with their mouths in the proper way. It would be exceedingly difficult in any case to estimate the nature and degree of influence which an oath exercises on the mind. To judge from the language of counsel, who are continually reminding the witnesses that they are upon their oaths, you would imagine that an oath was forgotten almost as soon as it was sworn.

There are many who have scruples as to the lawfulness of oaths. Upon this point, referring my readers to the 39th article of our Church and Burnet thereupon, I will conclude with a quotation from Paley:

"Quakers and Moravians refuse to swear upon any occasion; founding their scruples concerning the lawfulness of oaths upon our

Saviour's prohibition, Matt. V. 34. 'I say unto you, swear not at all.'

"The answer which we give to this objection cannot be understood, without first stating the whole passage: 'Ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths. But I say unto you, Swear not at all; neither by heaven, for it is God's throne; nor by the earth, for it is his footstool; neither by Jerusalem, for it is the city of the great King. Neither shalt thou swear by thy head, because thou canst not make one hair white or black. But let your communication be, Yea, yea; Nay, nay; for whatsoever is more than these, cometh of evil.'

"To reconcile with this passage of Scripture the practice of swearing, or of taking oaths, when required by law, the following observations must be attended to.

"1. It does not appear, that swearing 'by heaven,' 'by the earth,' 'by Jerusalem,' or 'by their own head,' was a form of swearing ever made use of amongst the Jews in judicial oaths: and, consequently, it is not probable that they were judicial oaths which Christ had in his mind when he mentioned those instances.

"2. As to the seeming universality of the prohibition, 'Swear not at all,' the emphatic clause 'not at all' is to be read in connexion with what follows; 'not at all,' *i.e.* neither 'by the heaven,' nor 'by the earth,' nor 'by Jerusalem,' nor 'by thy head:' 'not at all,' does not mean upon no occasion, but by none of these forms. Our Saviour's argument seems to suppose, that the people, to whom he spake, made a distinction between swearing directly by the name of God and swearing by those inferior objects of veneration, the heavens, the earth, Jerusalem, or their own head. In opposition to which distinction, he tells them that, on account of the relation which these things bore to the Supreme Being, to swear by any of them, was in effect and substance to swear by him; 'by heaven, for it is his throne;' 'by the earth, for it is his footstool;' 'by Jerusalem, for it is the city of the great King;' 'by thy head,' for it is his workmanship, not thine,—'thou canst not make one hair white or black;' for which reason he says, 'Swear not at all,' that is, neither directly by God, nor indirectly by anything related to him. This interpretation is greatly confirmed by a passage in the 23rd chapter of the same gospel, where a similar distinction, made by the Scribes and Pharisees, is replied to in the same manner.

"3. Our Saviour himself being 'adjured by the living God,' to declare whether he was the Christ, the Son of God, or not, condescended to answer the high-priest, without making any objection to the oath (for such it was) upon which he examined him.—'God is my witness,' says St. Paul to the Romans, 'that without ceasing I make mention of you in my prayers:" and to the Corinthians still more strongly, 'I call God for a record upon my soul, that, to spare

you, I came not as yet to Corinth.' Both these expressions contain the nature of oaths. The epistle to the Hebrews speaks of the custom of swearing judicially, without any mark of censure or disapprobation; 'Men verily swear by the greater; and an oath, for confirmation, is to them an end of all strife.'

"Upon the strength of these reasons, we explain our Saviour's words to relate, not to judicial oaths, but to the practice of vain, wanton, and unauthorized swearing in common discourse. St. James's words, chapter V. 12, are not so strong as our Saviour's, and therefore admit the same explanation with more ease."

APPENDIX X.

THE EMPIRE OF ATHENS.

No people can safely or permanently hold a great empire, who are not a military people, and who do not maintain a powerful army. Those states which have depended on a naval force, or on foreign mercenaries, have been all ultimately subdued. So fell Athens, and so fell Carthage. An insular, or quasi-insular position, protected by a navy, affords undoubtedly a great security against attack, and has enabled some people, with a scanty territorial dominion, to become independent and powerful; yet even this cannot hold out against a well-directed military power. Tyre yielded to Alexander; and Venice sank to decay. Carthage was the first mercantile nation in the world, and by means of her great wealth raised hosts of mercenaries, and subdued a great portion of Sicily and Spain; by the extraordinary genius of Hannibal she wrested the greater part even of Italy from the Romans: yet a Roman army landing in Africa strikes her to the heart, and all her power at once collapses. The Romans, with a warlike population and warlike institutions, annexing and by a wise and liberal policy firmly uniting to their state the surrounding nations of Italy, who were nearly as brave as themselves, gradually widened the circle of their power, and conquered the world.

Never was there a braver and better disciplined army than that of Sparta; but it was too small for purposes of conquest, or even of defence, unless she was supported by her neighbours. The institutions of Lycurgus were not calculated for empire. The Spartans were ignorant and illiberal; they kept themselves in a state of isolation, and were disliked even by their allies, who rejoiced at the defeat of Leuctra. They only became great by the misconduct of Athens, and could not maintain their position long.

The Theban army, naturally brave, was raised to great perfection by Epaminondas and Pelopidas, and Thebes was for a few years the head of a strong confederacy: but her allies were at a distance; they

were attached to her by fear of Sparta, rather than by any permanent ties, and fell off under a change of circumstances. She was surrounded by hostile neighbours, and, after losing her two great statesmen, relapsed into comparative insignificance.

Athens at an early period, through the energy and ability of her statesmen and commanders, and a concurrence of fortunate circumstances, acquired a great maritime power, receiving tribute from the numerous islands of the Ægæan, and many flourishing cities on the coast of Asia Minor, Macedonia and Thrace. She aspired to be the mistress of Greece; she was very nearly becoming, and probably would have become so, had she provided herself with a military power commensurate to her projects. Had she formed an intimate alliance, on terms of mutual advantage, with Eubœa and the most important of the islands, and had she, with their aid, maintained a well-disciplined army, strong enough to repel an enemy from her frontiers, she might have defied any hostile confederacy that could have been formed against her. With strong garrisons at Eleusis, Panactum, Decelea, and Oropus, and a force of ten thousand cavalry permanently stationed in the country, Attica would have been protected from invasion, while her fleets ravaged the coasts of the enemy. As it was, while attempting to make distant conquests, she was unable to hold her own. Attica was ravaged in the Peloponnesian war by an enemy, whom the Athenians were unable to encounter, and the occupation of Decelea was a source of constant peril and distress.

Nor indeed could Athens have been defended against an army of sixty thousand Peloponnesians, had they possessed the science of besieging which was learned a century later. Alexander with such a force would have taken Athens, as he took Thebes, by storm. A country denuded of its defences may be smitten by a *coup de main*, while it is sending its armaments all over the world. The dialogue in Henry V. act I. scene 2, contains truths applicable to all time:

KING HENRY.

We must not only arm to invade the French,
But lay down our proportions to defend
Against the Scots, who will make road upon us
With all advantages.

ARCHBISHOP OF CANTERBURY.

They of the marches, gracious sovereign,
Shall be a wall sufficient to defend
Our inland from the pilfering borderers.

KING HENRY.

We do not mean the coursing snatchers only,
But fear the main intendment of the Scot,
Who hath been still a giddy neighbour to us;
For you shall read, that my great grandfather
Never went with his forces into France,
But that the Scot on his unfurnish'd kingdom
Came pouring, like the tide into a breach,
With ample and brimfulness of his force;
Galling the gleaned land with hot assays;

Girding with grievous siege castles and towns •
That England, being empty of defence,
Hath shook and trembled at the ill neighbourhood.

ARCHBISHOP OF CANTERBURY.
She hath been then more fear'd than harm'd, my lieges.
* * * * * * *

WESTMORELAND.
But there's a saying very old and true—
If that you will France win,
Then with Scotland first begin:

Philip of Macedon began with his neighbours before he turned his arms against southern Greece; and took care to subjugate Greece before he thought of attacking Asia. The Athenians, in their first struggle for supremacy in Greece, ruined themselves by distant wars. The expedition to Egypt, B.C. 460, lost them two hundred gallies, and contributed to cripple their efforts when they were engaged in war in their own neighbourhood. Rash as this was, it is far exceeded in folly by the enterprise against Sicily, undertaken at a time when there was a confederacy of powerful states ready to assail them at the first opportunity. The attack on Syracuse was a measure of doubtful advantage, even had it succeeded. Alcibiades had formed a plan to conquer Sicily, Carthage, and the Italian peninsula, which last country would supply abundant material for augmenting the Athenian navy; he would then raise a large body of Iberian mercenaries, and attack Peloponnesus by land and sea; Greece must thus finally yield to their arms. This was the very thing which Carthage tried against Rome and failed. And Athens must have failed, with all her distant conquests, if unprovided with a domestic force for defence: the combined power of the Greek allies would have been too much for her. But it did not come to this: the Sicilian expedition was ill-planned, and ill-managed; and its failure led to the first overthrow of Athenian power.

Nor was Athens any wiser—wiser, I mean, in her imperial projects—after her recovery from the great disaster of the Peloponnesian war. Her spirit had formerly been greater than her strength: much of this survived, and she again aspired to empire, but did not adopt those measures which were necessary to insure success. She recovered indeed a good deal of her former power, owing to the incapacity of the Lacedæmonians, who alienated their best allies, and had not the means of standing by themselves. But the very facility with which Athens reascended to her former position seems to have caused her second downfall. The people were indisposed to military service; their discipline became still more relaxed; they hired mercenaries over whom they had little control, and whom they did not pay with regularity. In short, their system of warfare was infected with those vices which Demosthenes so forcibly points out in his Philippics, and which I need not recapitulate. One of the disastrous consequences was the Social war, which deprived them of some of their

best allies, and crippled their resources, at the critical time when they were engaged in hostilities with Philip. This mattered less while the war was carried on at a distance. Though Philip captured their towns on the coast of Macedonia and Thrace, they retained most of the Ægæan islands, and were able to annoy him by their navy. But when Philip, having reduced Thessaly and Phocis, was in a condition to carry the war into Attica, then was felt the want of that foresight, which should have provided long beforehand a national force capable of repelling invasion. The extraordinary exertions of Demosthenes contrived even then to procure allies, and to bring the contest to a doubtful issue. A few more men and a little better discipline and generalship might have turned the scale the other way. To illustrate the matter by a few striking facts—At Marathon, where Athens fought for her existence, her heavy-armed were 10,000. At Tanagra and at Chæronea, where she fought for her independence, they were scarcely 12,000. In the expedition against Syracuse she lost in men, including all kinds of force, upwards of 60,000, besides all her ships and materials of war. At Tanagra the scale was turned against her by the desertion of the Thessalian horse. Had she been able to bring ten thousand horse into action against Philip, she might have won Chæronea, or prevented his taking the field.

What is done cannot be undone; yet it may be read as a lesson to future time. Athens fell for the reasons above indicated; because her people, though buoyant with spirit and energy, though proud of their imperial sway and ambitious of its extension, had not the prudence to organise, to cement, to consolidate; they did not discipline their strength, nor make the most of their resources; consequently, though they could gain dominion, they could not keep it. Was this the fault of their political institutions? No. It is attributable rather to the want of historical experience.

But the real empire of Athens—that which was destined to be the most glorious, the most extended, and the most durable—was not one of material power, nor of commercial prosperity, but an empire of art, science, and literature. With this she was to conquer not armies and fortresses, but the minds and souls of men, and to establish over them a peaceful and civilising sway.

Solon, in the beginning of the sixth century before Christ, had given them a code of laws admirable for its wisdom and moderation, for its practical character, for the skill by which it reconciled opposing classes to each other, and provided for the growing wants of a people who were rising into mental activity and national power. Notwithstanding the intervening usurpation of Pisistratus, the Solonian institutions took root in the mind of Athens, and produced their fruits at a later period. The Persian wars not only roused up the popular energies, but gave the impulse to that genius in art and poetry, which astonished the world. Then Phidias and his scholars; then Ictinus, Callicrates, Mnesicles, Callimachus, Corœbus, Metagenes,

displayed their wonderful talents in architecture and sculpture. The Parthenon and Propylæa, the Odeum, the temple of Eleusis, the colossal image of Pallas, and the other magnificent productions of that period, were the most glorious trophies of Marathon and Salamis. Athens then became one of the principal seats of pictorial art, and though the greatest painters did not happen to be natives of her city, she had her own Micon, her Pleistænetus, Panænus, Apollodorus; while she excited emulation, and gave encouragement to all.

"Before the Persian war"—says Thirlwall—"Athens had contributed less than many other cities, her inferiors in magnitude and in political importance, to the intellectual progress of Greece. She had produced no artists to be compared with those of Argos, Corinth, Sicyon, Ægina, Laconia, and of many cities both in the eastern and western colonies. She could boast of no poets so celebrated as those of the Ionian and Æolian schools. But her peaceful glories quickly followed and outshone that of her victories, conquests, and political ascendancy. In the period between the Persian and Peloponnesian wars, both literature and the fine arts began to tend towards Athens, as their most favoured seat. For here, above all other parts of Greece, genius and talents were encouraged by an ample field of exertion, by public sympathy and applause, as well as by the prospect of other rewards, which however were much more sparingly bestowed. Accordingly it was at Athens that architecture and sculpture reached the highest degree of perfection which either ever attained in the ancient world, and that Greek poetry was enriched with a new kind of composition, the drama, which united the leading features of every species before cultivated in a new whole, and exhibited all the grace and vigour of the Greek imagination, together with the full compass and the highest refinement of the form of the language peculiar to Attica."

After the imagination of the people had been excited by the sublime muse of Æschylus, their ears charmed and their taste refined by the graceful composition of Sophocles and Euripides, and after the theatre had resounded with the wild drolleries of the comic poets, then, and not before, arose the prose literature of Athens. Thucydides, somewhere about the year B. C. 456, had heard the father of history recite a portion of his marvellous work at the Olympic games. It drew tears from his eyes, and awakened in him the spirit of emulation; so says the story. There had been prose composition before Herodotus, but none of it had survived. Pherecydes of Scyros had written mythical narratives and discourses: Xanthus of Lydia, Cadmus and Hecatæus of Miletus had applied prose to historical subjects: but Herodotus was the first who handled his subjects in such a manner as to deserve the title of historian. A Halicarnassian by birth, he became in his middle age an admirer of Athenian institutions, and even drew some of his inspiration from Athens. In the year B. C. 448 he read a portion of his history at the Panathenaic

festival, and received a reward of ten talents. At a later period he accompanied the Athenian colony to Thurii. It has been observed by Lytton Bulwer, that "something of the art of Sophocles may be traced in the easy skill of his narratives, and the magic yet tranquil energy of his descriptions." Donaldson has noticed the same thing, and expressed an opinion in some part of his writings, (I speak from memory,) that Herodotus, in the revising of his history, may have adopted some of the language of Sophocles. The concluding lines of the Œdipus strikingly remind one of the speech of Solon to Crœsus. But here Sophocles most probably borrowed from the historian.

The history of the Peloponnesian war has become a household book in England. The merits of Thucydides as an historian, and his defects as a writer, are pretty fairly stated by Cicero in the subjoined passage from the Orator: (*s. q*) Xenophon committed errors as an historian; yet is there not a wonderful charm about his Cyropædia and Anabasis? Cicero calls his language sweeter than honey, and the voice of the Muses:

"Thucydides res gestas et bella narrat, et prælia, graviter sane et probe; sed nihil ab eo transferri potest ad forensem usum et publicum. Ipsæ illæ conciones ita multas habent obscuras abditasque sententias, vix ut intelligantur: quod est in oratione civili vitium vel maximum. Quæ est autem in hominibus tanta perversitas, ut, inventis frugibus, glande vescantur? An victus hominum Atheniensium beneficio excoli potuit, oratio non potuit? Quis porro unquam Græcorum rhetorum a Thucydide quidquam duxit? At laudatus est ab omnibus: fateor: sed ita, ut rerum explicator prudens, severus, gravis; non ut in judiciis versaret causas, sed ut in historiis bella narraret. Itaque nunquam est numeratus orator. Nec vero, si historiam non scripsisset, nomen ejus extaret, cum præsertim fuisset honoratus et nobilis. Hujus tamen nemo neque verborum neque sententiarum gravitatem imitatur; sed, cùm mutila quædam et hiantia locuti sunt, quæ vel sine magistro facere potuerunt, germanos se putant esse Thucydidis. Nactus sum etiam qui Xenophontis similem esse se cuperet; cujus sermo est ille quidem melle dulcior, sed a forensi strepitu remotissimus."

From the time when prose literature commenced at Athens to the time of her decay as a republic, there was no lack of writers there. The city was illuminated with a variety of publications—speeches, essays, pamphlets and treatises, on questions of politics and public economy, on agriculture and mining, on natural history, poetry, rhetoric, ethics and metaphysics. The names of Antiphon, Isocrates, Plato, Antisthenes, Aristotle, Theophrastus, and others, immediately occur to us. Philosophy, during the time I am speaking of, received its greatest development at Athens. Its origin is referable to a much earlier period. Apart from its connexion with religion and poetry, the philosophy of the Greeks may be said to have begun with the seven sages, of whom Athenian Solon was one, in the sixth century.

Thales of Miletus was a mathematician and astronomer. He and his pupil Anaximenes made known to the world their speculations on cosmogony and the nature of the Deity. Subtle theories were propounded by those of the Eleatic school, Xenophanes, Parmenides, and Zeno. Pythagoras taught his doctrine of the transmigration of souls, and communicated discoveries in geometry and other science. Anaxagoras first promulgated a belief in the unity of the Godhead, for which the Athenians, intolerant as yet of any tenets inconsistent with the established religion, threw him into a prison, and he was with difficulty extricated by his friend Pericles. Something in the nature of philosophy was infused into the public mind through the medium of the drama, chiefly by the writings of Euripides. The Sophists (as they were called) gave lectures, and taught the art of subtle disputation But he who most effectually contributed to rouse the true spirit of philosophical inquiry was the man, whose name stands pre-eminent in the heathen world for wisdom and virtue, whom the Delphic oracle pronounced to be the wisest of men, viz. Socrates, the son of Sophroniscus.

As I am not writing a history of Socrates, I stop not to enter into a discussion concerning his character, or his opinions, or the nature of his teaching. Enough to say, that he believed in the immortality of the soul; he was practically, as well as theoretically, a good man; as he had been a brave soldier, so was he a lover of truth, and a detester of humbug and affectation. He taught, by precept and example, the duties of patience and fortitude, of being firm in action and mild in language. The more abstruse doctrines ascribed to him in the Platonic dialogues probably represent the opinions of Plato himself rather than his master. Socrates however gave the impulse to those inquiries, which his disciples so ardently pursued. From his school sprang, directly or indirectly, the various sects of philosophers, whose doctrines were soon to be carried to the farthest ends of the Grecian world, and three centuries afterwards enlightened the mind of the illustrious Roman who has discoursed about them so copiously:

"Socrates mihi videtur, id quod constat inter omnes, primus a rebus occultis, et ab ipsa natura involutis, in quibus omnes ante eum philosophi occupati fuerunt, avocavisse philosophiam, et ad vitam communem adduxisse: ut de virtutibus et vitiis, omninoque de bonis rebus et malis quæreret; cœlestia autem vel procul esse a nostra cognitione censeret, vel, si maxime cognita essent, nihil tamen ad bene vivendum. Hic in omnibus fere sermonibus, qui ab iis, qui illum audierunt, perscripti varie, copiose sunt, ita disputat, ut nihil affirmet ipse, refellat alios; nihil se scire dicat, nisi id ipsum; eoque præstare ceteris, quod illi, quæ nesciant, scire se putent; ipse se nihil scire, id unum sciat; ob eamque rem se arbitrari ab Apolline omnium sapientissimum esse dictum, quod hæc esset una omnis sapientia, non arbitrari sese scire, quod nesciat: quæ cum diceret

constanter, et in eâ sententiâ permaneret, omnis ejus oratio tum in virtute laudandâ, et in omnibus hominibus ad virtutis studium cohortandis consumebatur, ut e Socraticorum libris, maximeque Platonis intelligi potest. Platonis autem auctoritate, qui varius et multiplex et copiosus fuit, una et consentiens duobus vocabulis philosophiæ forma instituta est, Academicorum et Peripateticorum; qui rebus congruentes, nominibus differebant. Nam cum Speusippum, sororis filium, Plato philosophiæ quasi heredem reliquisset; duos autem præstantissimos studio atque doctrinâ, Xenocratem Chalcedonium, et Aristotelem Stagiritem; qui erant cum Aristotele, Peripatetici dicti sunt, quia disputabant inambulantes in Lyceo: illi autem, qui Platonis instituto in Academia, quod est alterum gymnasium, cœtus erant, et sermones habere soliti, e loci vocabulo nomen habuerunt. Sed utrique, Platonis ubertate completi, certam quandam disciplinæ formulam composuerunt, et eam quidem plenam ac refertam: illam autem Socraticam dubitationem de omnibus rebus et nullâ affirmatione adhibitâ consuetudinem disserendi reliquerunt. Ita facta est, quod minime Socrates probabat, ars quædam philosophiæ, et rerum ordo et descriptio disciplinæ: quæ quidem erat primo duobus, ut dixi, nominibus una; nihil enim inter Peripateticos et illam veterem Academiam differebat: abundantiâ quâdam ingenii præstabat, ut mihi videtur quidem, Aristoteles: sed idem fons erat utrisque, et eadem rerum expetendarum fugiendarumque partitio."—(Academ. Quæst. I. 4.)

Of Aristotle says the Roman elsewhere—"excepto Platone, haud scio an recte dixerim principem philosophorum." Not the born child of Athens, he was hers by adoption. Athens may fairly claim the man, who was so many years the disciple of Plato, and whose teaching has made the name of her Lyceum so renowned. Consider now for a moment, what Athens has done. In the course of three centuries she has either introduced, or encouraged and brought to perfection, legal and political science—architecture, sculpture, and painting—the drama, history, oratory, philosophy. Teachers of all kinds, emanating from the Socratic school, under the various names of Academics, Stoics, Peripatetics, Epicureans, become the instructors of the heathen world, and continue to be so, till a higher and more authoritative teacher comes to supersede them. This was the true empire of Athens. Her political power wanes and disappears; kingdoms rise and fall; revolution after revolution passes over the face of Europe as well as of Greece; yet new triumphs still come to the Alma Mater of Grecian learning; people of all nations congregate to the fountain of knowledge by her Acropolis, and her missionaries, including almost all of the Greek race, have gone over the world, to conquer it with civilisation. At first, the Ægæan and the coasts of Asia Minor are the scene of her activity; at a later period, we shall find, she forms the intellect of the colonies of Sicily and Magna Græcia; she has penetrated Italy, and is shedding the light of knowledge and

awakening thought through Gaul by Marseilles, and along the coast of Africa by means of Cyrene. She has sailed up both sides of the Euxine, and deposited her literary wares, as traders nowadays leave samples of merchandise. The whole of Asia Minor and Syria resounds with her teaching; barbarians are quoting fragments of her tragedians; Greek manners are introduced and perpetuated on the Tigris and Euphrates, the Hydaspes and Acesines. But there is no place so intimately connected with the glories of Athens, as that city which rose about the time of her political decline—I mean Alexandria—rose as if for the very purpose of becoming a capital seat of learning, to spread the literature of Athens to the most distant regions; fulfilling in this the desire of her beneficent founder, the pupil of Aristotle, whose soul, uniting a devotion to letters with a genius for sovereignty, was not content with conquests, unless they added to the field of knowledge, and who, when he was in India, paid a graceful homage to the city of intellect, by confessing that he was doing his great acts to gain the immortal praise of the Athenians.

That Athens became so intellectually great was owing to many causes—to her democratic energy and early military successes—to her situation, climate, and natural beauties—to her commerce—to the habits of life and customs of her people.

A confined triangle, perhaps fifty miles its greatest length, and thirty its greatest breadth; two elevated rocky barriers, meeting at an angle; three prominent mountains, commanding the plain, Parnes, Pentelicus, and Hymettus; a mild climate; a somewhat meagre soil, containing sufficient pasture for sheep and goats, yielding barley and even wheat to the skilful cultivator; with good figs, excellent oil and honey; fisheries productive; silver and metallic earths, and quarries of beautiful marble—such was Attica, regarded in an agricultural and material point of view. Looking at her commercial capabilities, we should notice her central situation with respect to Greece, and her commodious harbours, which were so placed as to receive vessels during all winds. And these natural advantages were improved by the industry of the population, and by the encouragement afforded to strangers who settled at Athens for the purposes of trade. All of which helped to make Athens a seat not only of naval power and commercial wealth, but one of art and learning. For of course it was necessary that the artists and students and all the tribe of visitors, who flocked to the metropolis of knowledge, should have the means of living well and enjoying themselves. And this accordingly they found in abundance. Athens had only too many resources for an elegant, nay, a luxurious abode. So plentiful were the imports of the place, that it was a common saying, that the productions, which were found singly elsewhere, were brought all together in Athens. The native wine of Attica was not of the best quality; but the richest wines were brought from the isles of the Ægæan; the finest wool and carpeting from Miletus; all varieties of luxuries

came from Asia and the Euxine and the coasts of the Mediterranean. The Athenians did not much condescend to manufactures themselves; but they encouraged them in others; and a population of foreigners caught at the lucrative occupation both for home consumption and for exportation. Their cloth, and other textures for dress and furniture, and their hardware, for instance, armour, were in great request. Labour was cheap; stone and marble in plenty; and the taste and skill, which at first were devoted to public buildings, as temples and porticos, were in course of time applied to the mansions of public men.

But the mental inspiration of the Athenians was owing less to any artificial improvement of the natural advantages of their fatherland, than to the nature and quality of the air they breathed and the soil they trod. It is agreed on all hands, that the purity of the air of Attica had a beneficial effect not only on the buildings and the vegetation of the country, but on the temper and genius of the people. And who can tell how the enthusiasm of the poets and orators may have been kindled by the rock of the Acropolis and the magnificent scenery which it commanded, independently even of its historical traditions and reminiscences? An eloquent writer in the Catholic University Gazette warms with the subject, as if he had been himself an Athenian—

"Many a more fruitful coast or isle is washed by the blue Ægæan; many a spot is more beautiful or sublime to see, many a territory more ample; but there was one charm in Attica, which in the same perfection was nowhere else. The deep pastures of Arcadia, the plain of Argos, the Thessalian vale, these had not the gift; Bœotia, which lay to its immediate north, was notorious for its very want of it. The heavy atmosphere of that Bœotia might be good for vegetation; but it was associated in popular belief with the dulness of the Bœotian intellect: on the contrary, the special purity, elasticity, clearness, and salubrity of the air of Attica, fit concomitant and emblem of its genius, did that for it which earth did not;—it brought out every bright hue and tender shade of the landscape on which it was spread, and would have illuminated the face even of a more bare and rugged country.

"The Attic olive tree was so choice in nature and so noble in shape, that it excited a religious veneration; and it took so kindly to the light soil, as to expand into woods upon the open plain, and to climb up and fringe the hills. The clear air brought out, yet blended and subdued, the colours on the marble, till they had a softness and harmony, for all their richness, which in a picture looks exaggerated, yet is after all within the truth. The same delicate atmosphere freshened up the pale olive, till the olive glowed like the arbutus or beech of the Umbrian hills."

He goes on to speak of the thyme and thousand fragrant herbs which carpeted Hymettus, and the hum of bees upon its flowery hill;

the prospect over the Ægæan, where we might "follow with our eyes the chain of islands, which, starting from the Sunian headland, seemed to offer to the fabled divinities of Attica, when they would visit their Ionian cousins, a sort of viaduct thereto across the sea: the dark violet billows with their white edges down below; those graceful fan-like jets of silver close upon the rocks, which slowly rise aloft like water spirits from the deep, then shiver and break and spread and shroud themselves, and disappear, in a soft mist of foam; the gentle, incessant heaving and panting of the whole liquid plain; and the long waves, keeping steady time, like a line of soldiery, as they resound upon the hollow shore."

Our greatest poets have celebrated the intellectual achievements of Athens; none so well as Milton:

Behold
Where on the Ægean shore a city stands,
Built nobly, pure the air, and light the soil;
Athens, the eye of Greece, mother of arts
And eloquence, native to famous wits
Or hospitable, in her sweet recess,
City or suburban, studious walks and shades.
See there the olive grove of Academe,
Plato's retirement, where the Attic bird
Trills her thick-warbled notes the summer long;
There flowery hill Hymettus, with the sound
Of bees' industrious murmur, oft invites
To studious musing; thero Ilissus rolls
His whispering stream: within the walls then view
The schools of ancient sages; his, who bred
Great Alexander to subdue the world,
Lyceum there, and painted Stoa next:
There shalt thou hear and learn the secret power
Of harmony, in tones and numbers hit
By voice or hand; and various measured verse,
Æolian charms and Dorian lyric odes,
And his who gave them breath, but higher sang,
Blind Melesigenes, thence Homer call'd,
Whose poem Phœbus challenged for his own:
Hence what the lofty grave tragedians taught
In chorus or iambic, teachers best
Of moral prudence, with delight received
In brief sententious precepts, while they treat
Of fate and chance and change in human life,
High actions and high passions best describing:
Thence to the famous orators repair,
Those ancient, whose resistless eloquence
Wielded at will that fierce democratie,
Shook the arsenal, and fulmined over Greece
To Macedon and Artaxerxes' throne:
To sage philosophy next lend thine ear,
From heaven descended to the low-roof'd house
Of Socrates; see there his tenement,
Whom well inspired the oracle pronounced
Wisest of men; from whose mouth issued forth
Mellifluous streams, that water'd all the schools
Of Academics old and new, with those
Surnamed Peripatetics, and the sect
Epicurean and the Stoic severe.

Shelley's panegyric (in his Ode to Liberty) is one of a much wilder strain:

The nodding promontories, and blue isles,
And cloud-like mountains, and dividuous waves
Of Greece, basked glorious in the open smiles
Of favouring heaven: from their enchanted caves
Prophetic echoes flung dim melody.
On the unapprehensive wild
The vine, the corn, the olive mild,
Grew savage yet, to human use unreconciled;
And, like unfolded flowers beneath the sea,
Like the man's thought dark in the infant's brain,
Like aught that is which wraps what is to be,
Art's deathless dreams lay veiled by many a vein
Of Parian stone; and yet a speechless child,
Verse murmured, and Philosophy did strain
Her lidless eyes for thee; when o'er the Ægean main

Athens arose; a city such as vision
Builds from the purple crags and silver towers
Of battlemented cloud, as in derision
Of kingliest masonry: the ocean floors
Pave it; the evening sky pavilions it;
Its portals are inhabited
By thunder-zoned winds, each head
Within its cloudy wings with sunfire garlanded,
A divine work! Athens diviner yet
Gleamed with its crest of columns, on the will
Of man, as on a mount of diamond, set;
For thou wert, and thine all-creative skill
Peopled with forms, that mock the eternal dead
In marble immortality, that hill
Which was thine earliest throne and latest oracle.

Within the surface of Time's fleeting river
Its wrinkled image lies, as then it lay
Immoveably unquiet, and for ever
It trembles, but it cannot pass away!
The voices of thy bards and sages thunder
With an earth-awaking blast
Through the caverns of the past;
Religion veils her eyes; Oppression shrinks aghast;
A winged sound of joy, and love, and wonder,
Which soars where Expectation never flew,
Rending the veil of space and time asunder!
One ocean feeds the clouds, and streams, and dew;
One sun illumines heaven; one spirit vast
With life and love makes chaos ever new,
As Athens doth the world with thy delight renew.

Where was the education which produced these results?—Such is a question which a modern philanthropist, busied in schemes for the dissemination of useful knowledge, would be inclined to ask: and certain it is, that, whatever be the natural capabilities of men, whatever their advantages of descent, race, soil, climate, &c., there must be some training to draw forth their native powers, and furnish their minds with knowledge. The ordinary scholastic education at Athens would not be thought much of now-a-days. The schools were day-schools, established on speculation by persons seeking to gain a livelihood, varying in quality according to the attainments of the different masters, (Demosthenes boasts that he had been sent to respectable schools,) yet all pursuing pretty much the same system

of teaching Boys went to them at the age of six and remained till they were sixteen. During this period the son of a respectable citizen was committed to the charge of his *Pædagogus*, usually an intelligent slave, who took him every day (except on festivals and holidays) to the school and the gymnasium; for bodily exercises were considered as important as those of the mind. The rudiments at school were grammar, writing, and cyphering: the higher literary instruction consisted in reading the poets, especially Homer, and committing portions of them to memory. At the best schools the lesson was very likely accompanied with instructive comment and explanation. Reading of prose authors probably came in fashion as the number of prose works increased. Music was deemed an important, though not absolutely essential, part of a liberal education. It was commenced at the age of thirteen. The favourite instrument in more ancient times was the flute, and Aristotle tells us, that at the close of the Persian war there was hardly any Athenian citizen who could not play it; but afterwards the harp and the lyre were preferred, because the flute distorted the face and did not allow accompaniment with the voice.

Such was the routine of schooling at Athens, better there probably than anywhere else; (and we know that Theban parents sometimes sent their sons to Athenian schools;) yet the amount of actual acquirement was not very great. Arithmetic and the rudiments of music; such a knowledge of his own language, and such cultivation of literary taste, as enabled him to enjoy the works of Greek writers, and to express himself with propriety; this, together with good manners, formed the sum total of what the best educated Athenian learned at school. There was no higher course of scholastic education; nothing further was open to the aspiring youth, except the lectures of the sophist or rhetorician; but this sort of instruction did not come into vogue till after the close of the Peloponnesian war. At sixteen the state took him in hand, and for two years compelled his attendance at the public gymnastic schools, where he was disciplined in manly exercises, and served that apprenticeship which enabled him to perform military service for his country.

Nor were there any public institutions at Athens for popular education; although some of the measures of her leading statesmen tended indirectly to promote that end. Pisistratus formed a library, to which he gave access to his countrymen, and made a careful collection of the Homeric poems. These and other poems, to diffuse the knowledge of them, were recited at the Panathenæa; an edict was issued by Hipparchus, making such recital compulsory. Measures of this sort were most important, when books, or manuscripts, were scarce and dear. According to Böckh there was no trade in books at Athens before the time of Plato. It is shown in the Charicles, that books were sold, and private libraries formed, at an earlier period; but the price of them must have been very high.

Cimon employed his ample fortune in embellishing the city and adorning the public places with trees. He built the first of those noble porticos, of which we hear so much in Athens, and formed the groves, which in process of time became the celebrated Academy. Formerly it was a piece of waste ground, two miles north of the city: under Cimon's hands it became a park or grove, laid out with shady walks and fountains, and containing open lawns and courses for exercise or recreation. Little thought the gallant soldier, what sort of lessons would be learned a century later in the walks of Academus.

It was Pericles who did the most to foster the genius of his countrymen. It was his wish to make Athens a seat of empire: in this he failed; but he succeeded in making her a seat of knowledge, without aiming at it so directly, as well by his patronage of art and science, as by the whole tenor of his administration. It was his policy to increase the power of the multitude, and to elevate their minds to a sense of their own importance. With this view he heightened the attractions of the theatres, and threw them open to all the citizens, and, while he laboured to render Athens more glorious and more magnificent, he taught the people to consider that this glory, this magnificence, was their own. Thus were the feelings of every Athenian identified with his country; his civic duties ennobled his character, and advanced him as a social and intellectual being. Here then lay a part of the secret—how Athens was enabled to achieve so much as an instructress of men. The topic has been well handled by Lytton Bulwer in his "Rise and Fall of Athens:"

"We cannot but allow the main theory of the system to have been precisely that most favourable to the prodigal exuberance of energy, of intellect, and of genius. Summoned to consultation upon all matters, from the greatest to the least;—compelled to a lively and unceasing interest in all that arouses the mind, or elevates the passions, or refines the taste;—supreme arbiters of the art of the sculptor, as the science of the lawgiver—judges and rewarders of the limner and the poet, as of the successful negociator or the prosperous soldier;—we see at once the all-accomplished, all-versatile genius of the nation, and we behold at the same glance the effect and the cause:—everything being referred to the people, the peopled learned of everything to judge. Their genius was artificially forced, and in each of its capacities. They had no need of formal education. Their whole life was one school. The very faults of their assembly, in its proneness to be seduced by extraordinary eloquence, aroused the emulation of the orator, and kept constantly awake the imagination of the audience. An Athenian was, by the necessity of birth, what Milton dreamt that man could only become by the labours of completest education: in peace a legislator, in war a soldier—in all times, on all occasions, acute to judge, and resolute to act. All that can inspire the thought or delight the leisure were for the people. Theirs were the portico

and the school—theirs the theatre, the gardens, and the baths; they were not, as in Sparta, the tools of the state—they were the state! Lycurgus made machines, and Solon men. Lacedæmon flourished and decayed, bequeathing to fame men only noted for hardy valour, fanatical patriotism, and profound but dishonourable craft, attracting indeed the wonder of the world, but advancing no claim to its gratitude, and contributing no single addition to its intellectual stores. But in Athens the true blessing of freedom was rightly placed in the opinions of the soul. Thought was the common heritage which every man might cultivate at his will. This unshackled liberty had its convulsions and its excesses, but producing unceasing emulation and unbounded competition, an incentive to every effort, a tribunal to every claim, it broke into philosophy with the one—into poetry with the other—into the energy and splendour of unexampled intelligence with all. Looking round us at this hour, more than four-and-twenty centuries after the establishment of the constitution we have just surveyed—in the labours of the student—in the dreams of the poet—in the aspirations of the artist—in the philosophy of the legislator—we yet behold the imperishable blessings we derive from the liberties of Athens and the institutions of Solon. The life of Athens became extinct, but her soul transfused itself, immortal and immortalizing, through the world."

"As the Romans deified law"—says the same eloquent writer in the 'Catholic University Gazette,' who has been already quoted—"so the Athenians deified the beautiful. A people so speculative, so imaginative, which throve upon mental activity as other races upon repose, and to whom it came as natural to think, as to a barbarian to smoke or to sleep, such a people were in a true sense born teachers, and merely to live among them was a cultivation of mind. Hence they suddenly took their place in this capacity from the time that they had emancipated themselves from the aristocratic families, with which their history opens. The Athenians felt that a democracy was but the political expression of an intellectual isonomy, and, when they had obtained it, and taken the Beautiful for their Sovereign, instead of Pisistratus, they came forth as the civilizers, not of Greece only, but of the European world.

"A century had not passed from the expulsion of the Pisistratidæ, when Pericles was able to call Athens the education or schoolmistress of Greece. And, ere it had well run out, upon the Athenian misfortunes in Sicily, the old Syracusan, who pleaded in behalf of the prisoners, conjured his fellow-citizens, 'in that they had the gift of Reason,' to have mercy upon those, who had opened their land as a common school to all men; and he asks—'To what foreign land will men betake themselves for liberal education, if Athens be destroyed?' And the story is well known, when, in spite of his generous attempt, the Athenian prisoners were set to work in the stone-quarries, how those who could recite passages from Euripides, found the talent

serve them instead of ransom, for their liberation. It was hardly more than the next generation, when her civilization was conveyed by the conquests of Alexander into the very heart of further Asia, and was the life of the Greek kingdom which he founded in the east. She became the centre of a vast intellectual propagandism, and had in her hands the spell of a more wonderful influence than the semi-barbarous power which first conquered and then used her. Wherever the Macedonian phalanx held its ground, thither came a colony of her philosophers; Asia Minor and Syria were covered with her schools, while in Alexandria her children, Theophrastus and Demetrius, became the life of the great literary undertakings which have immortalized the name of the Ptolemies."

It was the boast of Pericles, that the Athenians loved virtue and sought to do what was right and good and noble, not from servile feeling, not because they were obliged, not from fear of the law or any penal consequences of acting differently, but because it was their nature so to act, because it was so truly pleasant. Their political bond was good will and generous sentiment. They were loyal citizens, active, hardy, brave, munificent, from their love of what was high, and because the virtuous was the enjoyable, and the enjoyable was the virtuous. While in private and personal matters each Athenian was suffered to please himself, without any tyrannous public opinion to make him feel uncomfortable, the same freedom of will did but unite them together in concerns of national interest, because obedience to the magistrates and the laws was with them a sort of passion; it was their instinct to shrink from dishonour and to repress injustice. They could be splendid in their feasts and spectacles without extravagance, because the crowds whom they attracted from abroad repaid them for the outlay; and such large hospitality did but cherish in them a frank, unsuspicious, and courageous spirit, which better protected them than a pile of state secrets and exclusive laws. Nor did this joyous mode of life relax them, as it might relax a less noble race; for they were warlike without effort, and expert without training, and rich in resources by the gift of nature, and, after their fill of pleasure, were only more gallant in the field, and more patient and enduring on the march. They could love the fine arts and study the sciences without becoming effeminate; debate did not blunt their energy, nor foresight of danger chill their daring; but, as their tragic poet expresses it, "the loves were the attendants upon wisdom, and had their share in the action of every virtue." Thus boasted Pericles, and orators who succeeded him gave expression to similar opinions.

Such then was the condition of the Athenian mind, such the temper of the people, when the professors of philosophy first appeared among them, and attracted attention by offering to teach a higher and more important knowledge than any which had been taught before. These persons received no direct patronage from the

ruling power of the country, nor from parents or guardians. They did not establish schools, where boys or young men (to speak in modern phraseology) "finished their education." Most parents were deterred by the high fees which the Sophists demanded for their lectures. But among the rising generation there was a spirit of curiosity and inquiry, which could not be idle, an ambition which could not rest, nor endure to remain in ignorance while knowledge was within its reach. And therefore, when persons calling themselves "wise men," and professing to be masters of science and reason and eloquence, began to open their mission, the aspiring young Athenians, unfettered by conventional ideas, became their followers. The excitement they created in Athens is described by Plato in one of his Dialogues. Protagoras came to the bright city with the profession of teaching the political art; and the young flocked around him; not because he promised them entertainment or novelty, such as the theatre might promise; nor because he had any bribe of definite advantage to offer; he engaged to prepare them generally for the business of life, by giving them mental cultivation, and to prepare them better than Hippias or Prodicus, who were at Athens with him. Whether he was really able to do this, is another question; but it is clear, the very promise of knowledge operated as a potent spell upon the minds of the young Athenians.

Let us hear the state of the case from the mouth of Hippocrates himself, the youth, who in his eagerness woke Socrates, himself a young man at the time, while it was yet dark, to tell him that Protagoras was come to Athens. "When we had supped, and were going to bed"—he says—"then my brother told me that Protagoras was arrived, and my first thought was to come and see you immediately; but afterwards it appeared to me too late at night. As soon however as sleep had refreshed me, up I got, and came here."—"And I," continues Socrates, giving an account of the conversation—"knowing his earnestness and excitability, said:—'What is that to you? does Protagoras do you any harm?' He laughed and said: 'That he does, Socrates; because he alone is wise, and does not make me so.' 'Nay,' said I; 'if you give him money enough, he will make you wise too.' 'O heavens'—cried he—'that it depended upon that! For I would spare nothing of my own, or of my friends' property either; and I have now come to you for this very purpose, to get you to speak to him in my behalf. For, besides that I am too young, I have never yet seen Protagoras, or heard him speak; for I was but a boy when he came before. However all praise him, Socrates, and say that he is the wisest man to speak. But why do we not go to him, that we may find him at home?'"—They went on talking till the light; and then they set out for the house of Callias, where Protagoras, with others of his own calling, were lodged. There they found him pacing up and down the portico, with his host and others, among whom was a son of Pericles on one side of him

while another son of Pericles, with another party, were on the other. A party followed, chiefly of foreigners, whom Protagoras had bewitched, like Orpheus, by his voice. On the opposite side of the portico sat Hippias, with a bench of youths before him, asking him questions in physics and astronomy. Prodicus was still in bed, with some listeners on sofas round him. The house is described as quite full of guests. Such is the sketch given us by Plato of this school of Athens; and we learn from him how powerfully it interested the hearers. We see what it was that filled the Athenian lecture-halls and porticos: not the fashion of the day, not the patronage of the great, nor pecuniary prizes, but the reputation of talent and the desire of knowledge—ambition, if you will, personal attachment, but not an influence, political or other, external to the school. "Such Sophists," says Grote, referring to the passage in Plato, "had nothing to recommend them except superior knowledge and intellectual fame, combined with an imposing personality, making itself felt in the lectures and conversation."

And so the thing went on. The real character of the Sophists we need not trouble ourselves about. Some of them might be mere pretenders, professing to know what they did not know, and to teach what they could not teach. But what we are concerned with is this. There were the *élite* of the Athenian youth, with a thirst for knowledge, which required to be satisfied. If Protagoras and Prodicus were unable to do what they promised, there were others to come, who were better able to accomplish the task. Accordingly the scene shifts; the Sophists pass from the stage, and those whom history has designated Philosophers begin to play their part. There is still no lack of pupils; and no compulsory discipline, to enforce their attendance. In learning, as in life, the voluntary system, so lauded by Pericles, prevails. It was the method of influence, the action of personality, the play of mind upon mind, which by a spontaneous force kept the schools of Athens going, and made the pulses of foreign intellect keep time with hers.

But of what advantage either to Athens or to the world were these intellectual acquirements? Did the Athenians possess practical wisdom? or good morals? Were they not in public life rapacious, rash, fickle, tyrannical? in private, sensual and profligate? Was their boasted philosophy anything more than a dream?

With respect to the political state of Athens, I consider that she enjoyed the best constitution in Greece, and, although she committed many errors, she conferred upon her people, during the period of her independence, a greater amount of happiness and security than was to be found anywhere else. In aiming at empire, she did that which all conquering nations have done, and which seems only to be justified by two things; by success, and by making a good use of success. Yet we may fairly say, that the subjects of Athens were as well off under her sovereignty, as they were under that of Persia, or Sparta,

or Macedonia. With respect to the vices of private life, we must bear in mind that we are considering the condition of a pagan country. Where the light of religion has not shone, there is always danger, as the Catholic writer says, that the love of the beautiful will become the love of the sensual. It is impossible to read history without seeing that there was far too much of this at Athens. The indecencies of Aristophanes could not be exhibited on a Christian stage. A modern tribunal would not regard with favour the act of Hyperides, who, in order to obtain a verdict for the lovely Phryne, tore open her vest, and displayed her bosom to the jury. On the other hand, we must not lose sight of the redeeming points in the character of the Athenians, and the circumstances which distinguished them from their contemporaries—for example, their respect for law and legal ordinances—their sensibility to the appeals of a lofty eloquence—their toleration of the reproof addressed to themselves by their orators and comic poets—the general mildness with which they administered their penal laws—their good manners and behaviour in society, (acknowledged by the Thebans, when they quartered the Athenian troops in their houses)—the provision which they made for infirm citizens, and the orphans of those who fell in war—the humanity which they exercised to slaves (witness their frequent emancipation, as after the battle of Arginusæ, and contrast such conduct with the treatment of the Helots at Sparta)—again, their institution of clubs, for charitable as well as for social purposes, and the numerous acts of generosity and public spirit recorded of individual Athenians. Even in their sensuality there was a mixture of refinement. They were less devoted to the pleasures of the table than most other people: taste gave laws to the symposium; the carouse was enlivened by the charms of wit and the intercourse of soul with soul. Thus (to borrow the language of Burke) vice lost much of its evil by a diminution of its grossness. But conceding to the full, that Athens was tainted with vice and sensuality, the question still occurs—was this owing to mental cultivation and philosophy? or did they not mitigate the evil to some extent? Are we to believe that refinement of taste and sentiment is itself vicious? that art is debasing? philosophy demoralising? Did Æschylus by his sublime drama corrupt his audience? Did men become worse because Socrates taught the doctrine of the soul's immortality, and inculcated the practice of virtue; or because the Stoics contended that virtue was sufficient for happiness and that a wise man regarded pain as no evil? Athens is to be judged in comparison with the nations that surrounded her; and her teachers and sages with reference to the condition of the world in their time. For example; was it better to live (morally and intellectually speaking) in an Athenian or in a Bœotian atmosphere? was better teaching to be had at Athens, or at Sparta? Was it not more improving to man's nature to embrace the tenets of Socrates and Plato, than to believe the obscene myths of

polytheism? Granted, that Socrates and Plato did not teach with authority, and that nothing which they taught, either in religion or in morals, could be more than partially true. A glimmering of light however is better than none at all; and Providence may have so ordered it, that these imperfect doctrines, revealed by the light of nature, and illustrated by the reasoning of thoughtful men, should continue to temper the grossness of heathenism, till the time arrived when Divine truth was to take the place of human speculation. The literature handed down to us by Athenian sages is of that serene and severe beauty, which has ever been associated with the term "classical," and it is grave and profound enough for the ancient fathers to have considered it a good preparation for the Gospel. As Greek philosophy must before the Christian era have been the most elevating and purifying study that could be found, so even now it has its use as showing the limits to which the human mind could reach without the aid of divine Revelation, and proving that natural theology, rightly understood, is in harmony with Revealed.

Regarding it in this point of view, we cannot but acknowledge the justice of those praises which philosophy has received both from heathens and Christians:

"O vitæ philosophia dux! o virtutis indagatrix, sepultrixque vitiorum! quid non modo nos, sed omnino vita hominum sine te esse potuisset? tu urbes peperisti; tu dissipatos homines in societatem vitæ convocâsti; tu eos inter se primo domiciliis, deinde conjugiis, tum literarum et vocum communione junxisti; tu inventrix legum, tu magistra morum et disciplinæ fuisti: ad te confugimus; a te opem petimus; tibi nos, ut antea magnâ ex parte, sic nunc penitus totosque tradimus. Est autem unus dies bene et ex præceptis tuis actus peccanti immortalitati anteponendus."—Tuscul. Quæst. V. 2.

"Multi in custodiâ, multi in exilio dolorem suum doctrinæ studiis levaverunt. Princeps hujus civitatis Phalereus Demetrius, cùm patriâ pulsus esset injuriâ, ad Ptolemæum se regem Alexandriam contulit, qui cùm in hâc ipsâ philosophiâ, ad quam te hortamur, excelleret, Theophrastique esset auditor; multa præclara in illo calamitoso otio scripsit non ad usum aliquem suum, quo erat orbatus, sed animi cultus ille erat ei quasi quidam humanitatis cibus."—De Finibus, V. 19.

How charming is divine philosophy!
Not harsh and crabbed, as dull fools suppose;
But musical as is Apollo's lute,
And a perpetual feast of nectar'd sweets,
Where no crude surfeit reigns.—Comus.

'Tis not a city crown'd
With olive and enrich'd with peerless fanes
Ye would dishonour, but an opening world
Diviner than the soul of man hath yet
Been gifted to imagine—truths serene
Made visible in beauty, that shall glow
In everlasting freshness, unapproach'd

By mortal passion, pure amid the blood
And dust of conquests, never waxing old,
But on the stream of time, from age to age,
Casting bright images of heavenly youth
To make the world less mournful.—TALFOURD'S *Athenian Captive*.

Lastly, I have to notice the assertion which has frequently been made, that the devotion of the Athenians to literature and philosophy led to the decay of their military energy and thus to the loss of independence. "Athens"—says the Catholic writer—"needed to be of sterner stuff: she was of too fine and dainty a nature for the wear and tear of life." "As in despotisms"—says Lytton Bulwer—"a coarse and sensual luxury rots away the vigour and manhood of a conquering people, so in this intellectual republic it was the luxury of the intellect which gradually enervated the great spirit of the victor race of Marathon and Salamis, and called up generations of eloquent talkers and philosophical dreamers. The spirit of poetry, or the pampered indulgence of certain faculties to the prejudice of others, produced in a whole people what it never fails to produce in the individual;—it unfitted them—just as they grew up into a manhood exposed to severer struggles than their youth had undergone—for the stern and practical demands of life, and suffered the love of the Beautiful to subjugate or soften away the common knowledge of the Useful. Genius itself became a disease, and poetry assisted towards the euthanasia of the Athenians."

This sounds very well, and the substance of it has often been repeated: the Roman Senate acted on the same notion, when they committed Greek treatises to the flames, and when they expelled Greek philosophers and rhetoricians from the city, for fear of their introducing studies which would unfit the youth of Rome for the performance of civil and military duties. Yet it is not so easily to be conceded, that intellectual tastes and pursuits—(I speak not of such as lead to idleness and dissipation)—must necessarily enfeeble the courage of men, or incapacitate them for active exertion. Æschylus and Socrates were brave soldiers. Alexander's princely aspirations were in no way slackened by his having been a pupil of Aristotle. Xenophon, Epaminondas, (to mention a few out of many examples,) were men who united personal courage and military talents with high mental culture. Nor does the history of Athens in any way establish the proposition which we are considering. The Athenians fought with courage during the Peloponnesian war, though they had imbibed a taste for the arts and the drama; their disasters at Syracuse and Ægospotamos were owing not to lack of courage, but to the misconduct of their commanders. They lost Chæronea: so did the Thebans. One may as well say, that the Thebans were beaten because they were dull in intellect, as that the Athenians were beaten because they were the reverse of dull. If they had had a large numerical force and had run away like sheep, there would have been more to say. That they were not better prepared in numbers and

discipline, was, as I have already intimated, a political error; but why charge it upon poetry and philosophy? The like errors were committed by other states, which were quite innocent of Attic taste and refinement, or Greece would not have been subjugated by Philip. Disunion, mutual jealousies, want of foresight, and narrow policy, left no chance against a man who possessed large military resources, and was constantly augmenting and improving them, extending his influence and alliances, and preparing long beforehand for the blow which he finally struck. Philip could not have conquered an army of 40,000 Spartans; nor could he have beaten Sparta, Thebes, and Athens, united together; but he was more than a match for only two of them, with his improved phalanx, and powerful force of cavalry and light troops. Demosthenes truly said, that, if there had been a few more statesmen in Greece like himself, Hellenic liberty might have been preserved. We see what he was able to effect even with the scanty means at his command. From the struggle at Chæronea, as well as from the partial success of the Athenians in the Lamian war, it is apparent what might have been accomplished if the orator's warnings had been duly attended to. There is more practical wisdom to be learned from the counsels of Demosthenes, urging his countrymen to exert themselves with hopefulness and courage, than from the theories of persons reasoning after the event, and making out that things must have been so because they were so.

THE END.

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